No. 09-11121

IN THE
SUPREME COURT OF THE
UNITED STATES

J.D.B.,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent,

ON WRIT OF *CERTIORARI* TO
THE SUPREME COURT OF NORTH CAROLINA

BRIEF OF JUVENILE LAW CENTER, *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI

Amici Juvenile Law Center et al. work on issues of child welfare, juvenile justice, and children's rights. Amici have a particular expertise on the interplay between the constitutional rights of children and social science and neuroscientific research on adolescent development, especially with regard to children involved in the juvenile and criminal justice systems.[1]

This Court has yet to address directly how to assess the effect of age in determining whether a child is in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966). *Amici* share a deep concern that the North Carolina Supreme Court's decision that *Miranda* custody decisions must be made without regard to age would subject scores of youth to interrogations they neither wish to participate in nor fully understand the consequences of, but cannot, because of their age, terminate or leave. Because youth are more likely than adults to make false confessions, *Amici* fear that such a rule would also undermine the truth-seeking function that proper interrogations fulfill.

For that reason, *Amici* join together to urge the Court to clarify that the *Miranda* custody determination must take age into account.

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[1] The consent of counsel for all parties is on file with the Court. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. A brief description of all *Amici* appears at Appendix A.

SUMMARY OF ARGUMENT

In *Miranda v. Arizona,* this Court recognized that "rights declared in words might be lost in reality." 384 U.S. 436, 443 (1966). Thus the Court not only stated a broad principle regarding Fifth Amendment rights, it also outlined the specific procedures needed to protect an individual from making a compelled confession. *Id.* Without considering the age of the suspect in a custody determination, adolescents will be effectively excluded from the protections and guarantees of the Fifth Amendment.

It is now well settled that youth status bears on legal status. The "kids are different" doctrine for the purposes of constitutional jurisprudence is a principle firmly established in the decisions of the Court. In recent years, the doctrine has been buttressed by a burgeoning body of social science and neurological research demonstrating that the differences between youth and adults are psychological and physiological, as well as social. *See, e.g., Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). The Court has thus repeatedly recognized that to make constitutional rights a reality for youth, an adolescent's age must be taken into account.

The facts of the instant case involve the interrogation by law enforcement of a thirteen year old middle school student in a closed conference room undertaken by both law enforcement and school administrators. The relevance of age to the *Miranda* custody determination is a question of first

impression for the Court. However, the question does not arise in a vacuum. Ample precedent in this and related areas support a holding by this Court that age is an objective factor that must be considered in determining whether a reasonable person would have felt free to terminate an interrogation.

For example, this Court has already acknowledged that youth are more susceptible to coercion and outside pressure, and specifically more susceptible to coercion during police interrogations. *See, e.g., Haley v. Ohio*, 332 U.S. 596, 599 (1948); *Gallegos v. Colorado*, 370 U.S. 49 (1962). Moreover, this Court has previously recognized the special vulnerability of youth to social and other pressures in the school setting, both because attendance at school is compulsory and because of youth's inherent deference to authority. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 592-93 (1992).

This Court has also highlighted the importance of providing "clear guidance to the police" regarding interrogations. *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004). The consideration of age serves this goal. Age is an objective, categorical and knowable characteristic, rather than a personal idiosyncrasy that an officer could not be expected to know at the time of interrogation. Indeed, as evidenced by state statutes, case law and police manuals, officers throughout the country routinely take age of the suspect into account at the point of interrogation.

As *Amici* demonstrate below, a child does not perceive of or respond to an interrogation in the same way as an adult. By refusing to make the consideration of age a part of the *Miranda* custody

determination, the North Carolina Supreme Court prevents adolescents from receiving the protections of the Fifth Amendment. It is precisely this disconnect between abstract rights and reality that the *Miranda* Court cautioned against.

Amici respectfully request that this Court reverse the North Carolina Supreme Court and hold that age must be considered in *Miranda* custody determinations.

ARGUMENT

This Court has long held that youth are different from adults in constitutionally relevant ways. The *Miranda* custody determination is no different. Because youth are more susceptible to coercion than adults, the question of whether they are in custody depends on their developmental status. Moreover, youth who are interrogated in the school environment are particularly vulnerable — both because their movement is curtailed by law and policy, and because the school setting exacerbates their susceptibility to coercion. For these reasons, age is a vital factor in the *Miranda* custody determination.

I. Age is a Crucial Factor in the *Miranda* Custody Determination

To determine whether J.D.B. was in custody, this Court has made clear that the test is (1) what

circumstances surround the interrogation and (2) "given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). Because this test turns on the suspect's view of his or her circumstances, the determination logically must take the suspect's age into account.

Indeed, age and the developmental differences between youth and adults have consistently informed this Court's treatment of adolescents under the Constitution. In the confession context, the Court has specifically recognized that the differences between adolescents and adults make them more susceptible to coercion and therefore entitled to Constitutional protections tailored to their particular needs. Age is no less relevant to the *Miranda* custody determination.

A. This Court Has Considered Juvenile Status In Construing Adolescents' Rights In Related Contexts

The issue before this Court – how age factors into *Miranda* custody determinations – is one of first impression. In *Yarborough v. Alvarado*, 541 U.S. 652 (2004), the Court reversed the Ninth Circuit ruling which held that juvenile status was relevant to the custody question.[2] However, the issue was raised

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[2] *Alvarado v. Hickman*, 316 F.3d 841,850 (9d Cir. 2002) (holding that the Yarborough was "in custody" when he was

through a federal *habeas* petition, which requires exceptional deference to a state court on habeus review. *Id.* at 665. *Yarborough* held only that the state court's refusal to consider Alvarado's age was a "reasonable" application of "clearly established law," and that case law had thus far failed to consider the relevance of "age" in *Miranda* cases. *Id.* at 666.[3] The instant case is now before the Court on direct appeal, allowing the Court to address the issue on the merits. [4]

In determining whether J.D.B. was in custody, the Court must consider all the circumstances that would bear on a reasonable person's belief that they were not free to terminate the interrogation and leave. In *Miranda v. Arizona*, 384 U.S. 436 (1966), this Court recognized the critical importance of ensuring that police do not give in to "the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions." *Id.* at 443 (citing *Brown v. Walker*, 161 U.S. 591, 596-97 (1896)). Individuals must be protected from "overzealous police practices." *Id.* at 444. This

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interrogated by police and therefore *Miranda* warnings were required.)

[3] The *Yarborough* Court addressed age and experience. The question of experience is not at issue here. Moreover, unlike age, the experience of a suspect is difficult, if not impossible for an officer to know.

[4] *Amici* clarify here that the appropriate standard for considering a *Miranda* issue on direct review is *de novo*. *See Lewis v. Texas*, 386 U.S. 707, 708 (1967). There is no reason to apply the Antiterrorism and Effective Death Penalty Act (AEDPA) "unreasonable application of clearly established federal law" standard here.

Court's rules about custodial interrogation must ultimately satisfy these goals.

The *Yarborough* Court acknowledged that "fair-minded jurists could disagree over whether Alvarado was in custody." *Yarborough v. Alvarado*, 541 U.S. 652, 653 (2004). As the majority observed, Alvarado was "five months shy of his 18th birthday" at the time of the alleged offense. *Id.* at 656. Justice O'Connor's concurrence in *Yarborough* acknowledged, however, that the adolescent's age could impact the determination of whether the child was in custody. *Id.* at 669 (O'Connor, J., concurring) (acknowledging that "there may be cases in which a suspect's age will be relevant to the Miranda 'custody' inquiry..."). For example, a younger adolescent could have more difficulty understanding his rights and terminating police questioning than Alvarado. Police would also have an easier time predicting the child's reaction. *Id.*[5]

J.D.B. was only thirteen at the time of his interrogation, which occurred at school. Police unquestionably knew when they interrogated J.D.B. in his middle school that they were questioning a minor, and that his age would have a bearing on his responses to their questioning and his understanding of his situation. It can hardly be disputed that a reasonable thirteen-year-old will behave differently than a reasonable adult. To apply the adult standard to a thirteen-year-old defendant would allow police to create highly coercive situations without providing the legal protections designed to

[5] Because age is but one factor in the custody "totality of the circumstances" test, it allows for the officer or the court to place more weight on it for a younger adolescent than an older one.

protect against false or coerced confessions. Age is an objective factor that should be considered in undertaking this analysis.

Moreover, while this Court has not directly considered age in the context of *Miranda* custody determinations, it has long held that the suspect's age is highly relevant in determining the voluntariness of an adolescent's confession and recognized that minors are more susceptible than adults to coercion during a police interrogation. As the Court observed specifically in *Haley v. Ohio*, 332 U.S. 596, 599 (1948), a teenager, too young to exercise or even comprehend his rights, becomes an "easy victim of the law."

In *Haley*, this Court held that a fifteen-year-old boy's confession should have been excluded because it was obtained by methods violative of the Due Process clause. Haley was interrogated from midnight until five in the morning by police officers working in relays. *Id.* at 598. He was neither informed of his rights nor provided access to counsel, friends, or family. *Id.* This Court's analysis of the voluntariness of Haley's confession turned on his juvenile status:

> Age 15 is a tender and difficult age for a boy of any race. . . That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might

> stand the ordeal . . . But we cannot believe that a lad of tender years is a match for the police in such a contest.

Id. at 599-600. The juvenile suspect, in the Court's view, required a categorically different consideration because of his age.

Similarly, in *Gallegos v. Colorado*, 370 U.S. 49 (1962), this Court found unconstitutional the admission of the confession of a fourteen year old held for five days without access to his parents, lawyers or a judge. The Court's holding, which rested on due process grounds, took issue with "the element of compulsion . . . condemned by the Fifth Amendment." *Id*. at 51. Recognizing the relevance of age, the Court reasoned that the juvenile "cannot be compared with an adult in full possession of his sense and knowledgeable of the consequences of his admissions." *Id*. at 54. Without advice as to his rights or the benefit of more mature judgment, the Court found that the juvenile "would have no way of knowing what the consequences of his confession were" or "the steps he should take in the predicament in which he found himself." *Id*. Not only are youth more susceptible to coercion than adults, their limited understanding of the criminal justice system itself puts them at a disadvantage. Gallegos was "not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded" and therefore was "unable to know how to protect his own interests or how to get the benefits of his constitutional rights." *Id.* Thus, to interrogate a fourteen-year-old boy during a five-day detention would be "to treat him as if he had no constitutional rights." *Id*. at 55.

While voluntariness and custody are distinct questions, the confession cases are nevertheless instructive. The same characteristics of adolescence that would cause a youth to feel "overwhelm[ed]" during an interrogation would similarly cause a reasonable youth to feel that he could not leave the site of the interrogation. *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948).

More recently, in decisions interpreting juveniles' rights under the Eighth Amendment, this Court has emphasized that adolescents' lack of maturity affects their decision-making capacity such that youth must be treated differently from adults for sentencing purposes. *See Graham v. Florida*, 130 S. Ct. 2011 (2010) (holding that juvenile offenders are considered categorically less culpable than adults and thus cannot be sentenced to life in prison without parole for nonhomicide crimes). *See also Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the death penalty cannot be applied to offenders who were under the age of eighteen when their crimes were committed due to their diminished culpability). These decisions rest not only on differing notions of culpability, but also on the recognition of juveniles' inadequate understanding of the criminal justice system and how to navigate it. *See Graham*, 130 S. Ct. at 2032 (2010) (noting that juveniles' limited understanding puts them at a "significant disadvantage in criminal proceedings"). *See also In re Gault,* 387 U.S. 1, 45 (1967) (finding that confessions of juveniles require "special caution").

Although *Graham* and *Roper* focus on juvenile culpability, the salient characteristics this Court identified as distinguishing juveniles from adults,

including immature decision-making and vulnerability to outside pressures, also operate to make juveniles more vulnerable to law enforcement interrogation and questioning. The *Miranda* inquiry should therefore recognize that teenagers, who are uniquely susceptible to coercion by police, experience custody differently than adults.

B. Social Science Research Confirms the Distinct Susceptibility of Youth to Coercion

Impairments in adolescents' decisionmaking and judgment are confirmed by social science research. Psychosocial factors influence adolescents' perceptions, judgment and decision-making and limit their capacity for autonomous choice. Elizabeth Cauffman & Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, *in Youth on Trial: A Developmental Perspective on Juvenile Justice* 325 (Thomas Grisso & Robert G. Schwartz eds., 2000); Kathryn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences in Delinquency*, 32 L. & Hum. Behav. 78, 79-80 (2008). Specifically, adolescents' present-oriented thinking, egocentrism, greater conformity to authority figures, minimal experience and greater vulnerability to stress and fear leave juveniles more susceptible than adults to feeling that their freedom is limited.[6] Thus, a reasonable youth will feel that

[6] *See* Marty Beyer, *Recognizing the Child in the Delinquent*, 7 Ky. Child Rts. J. 16, 17 (Summer 1999); Marty Beyer,

he or she is in custody even when a reasonable adult will not.

Research further establishes that adolescents' lack of experience with stressful situations contributes to their more limited capacity to respond adeptly to such situations. *See* Laurence Steinberg & Robert G. Schwartz, Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Perspective on Juvenile Justice 9, 26 (Thomas Grisso and Robert Schwartz eds. 2000). Adolescents tend to process information in an "either-or" way, particularly in stressful situations. Where adults perceive multiple options in a particular situation, adolescents may only perceive one. *See* Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 Crim. Just. 27, 27 (Summer 2000); Marty Beyer, *Recognizing the Child in the Delinquent*, 7 Ky. Child Rts. J. 16, 17-18 (Summer 1999). Juveniles' tendency to focus on the present moment, combined with their intense self-consciousness, makes it difficult for them to think past the time of interrogation to a point in which they would be free, preventing them from recognizing the possibility of terminating an interrogation.

Further, research confirms that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority

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Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases, 15 Crim. Just. 27, 27 (Summer 2000); David Elkind, *Egocentrism in Adolescence*, 38 Child Dev. 1025, 1029-30 (1967); Kids are Different: How Knowledge of Adolescent Development Theory Can Aid in Decision-Making in Court (L. Rosado ed., 2000); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, 30, 35-36 (2009).

figures . . . when being interrogated by the police." Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333, 357 (2003); *see also* Lawrence Kohlberg, *The Psychology of Moral Development: The Nature and Validity of Moral Stages* 172-73 (1984). Thus, when subjected to police questioning, juveniles are less prone to feel as though they can end questioning or leave the room.

Younger children are even more susceptible to pressure during police interrogations than older adolescents. "A significant body of developmental research indicates that, on average, youths under the age of fourteen differ significantly from adolescents sixteen to eighteen years of age in their level of psychological development." Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice*, 83 N.C. L. Rev. 793, 817 (2005). Furthermore, children fifteen and younger are "significantly more likely than older adolescents and young adults to be impaired" in legal contexts. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333, 356 (2003).[7]

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[7] Indeed, a developmentally appropriate response to confessions from younger teenagers might go further: because some such youth may not understand *Miranda* warnings, requiring the presence of counsel could even more reliably ensure the voluntariness – and accuracy – of their confessions. A study of youth's comprehension of *Miranda* warnings revealed that "understanding . . . was significantly poorer among juveniles who were 14 years of age or younger than among 15-16-year-old juveniles or adult offenders . . ." Grisso, *Juveniles' Competence*

Younger suspects, who perceive themselves to be in custody, must at a minimum have their rights explained to them at the outset of questioning. A 13-year-old boy such as J.D.B. would not have believed that he could refuse to answer Officer DiCostanzo's questions and leave the school conference room. He was therefore in custody under *Miranda*.

II. Age is Particularly Crucial to the *Miranda* Custody Determination When Students are Interrogated in the School Setting

A. Adolescents' "Freedom of Action" Is Sharply Curtailed by School Law and Policies

An individual is in custody for *Miranda* purposes if his or her freedom is "curtailed in any significant way." *Miranda,* 384 U.S. at 467. Thus, to assess whether an individual is in custody, courts must determine how "a reasonable person in the position of the individual being questioned would gauge the breadth of his or her 'freedom of action.'" *Stansbury v. California*, 511 U.S. 318, 325 (1994).

In *Miranda,* this Court clarified that a suspect must be protected from compelled confessions in settings in which he is "deprived of every psychological advantage." *Miranda,* 384 U.S. at 449. The factual scenarios at issue in *Miranda* involved

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to Stand Trial, supra, at 356. (citing Thomas Grisso, *Juveniles' Waiver of Rights: Legal and Psychological Competence* 192 (1981)).

adults who were "thrust into" an "unfamiliar" and "police-dominated atmosphere," *id.* at 456-57, where they were "cut off from the outside world." *Id.* at 445. In contrast to those at home with the support of family or friends, such suspects were in environments where the "atmosphere suggests the invincibility of the forces of the law." *Id.* at 450. The *Miranda* Court, of course, was considering the vulnerability of *adults*; it did not even contemplate the factors that would limit an adolescent's freedom of action.

The relevant question here is not the impact the environment would have on an adult, but whether a reasonable thirteen-year-old interrogated under the circumstances here would have felt he was at liberty to terminate the interrogation and leave. Those circumstances included being pulled from class in the middle of the school day, escorted by a uniformed officer to a confined conference room, and subjected to questioning by four adults, including two police officers and two school officials. This requires an understanding of how a thirteen-year-old student in a school setting would perceive his or her breadth of "freedom of action." *Stansbury*, 511 U.S. at 325. *Amici* submit that the average adolescent would perceive his or her "freedom" quite narrowly.

Every state has compulsory school attendance laws. *See Ingraham v. Wright*, 430 U.S. 651, 660 n.14 (1977) (noting that compulsory school attendance laws have been in force in all states since 1918); Susanna Kim, *Section 1983 Liability in the Public Schools after Deshaney: the "Special Relationship" Between School and Student,* 41 UCLA L. Rev. 1101, 1126 (1994). The penalties for failure to attend

school can be severe: a youth can be detained,[8] declared a ward of the court,[9] or have criminal liability and even jail time imposed on his or her parents.[10] Once at school, minors must obey teachers and administrators or risk discipline, including suspension and expulsion. Indeed, the student handbook in J.D.B.'s school instructs students to stop moving when an adult addresses them and prohibits students from walking away until an adult has dismissed them. *In re J.D.B.,* 686 S.E.2d 135, 144 (N.C. 2009). The assessment of whether JDB thought he was in custody under the factual scenario here must take into account what it means to be a child in the school context.

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[8] *See, e.g.,* La. Child Code. Ann. art. 733.1(West, Westlaw through 2010 Regular Session); Okla. Stat. Ann. tit. 70 § 10-109 (West, Westlaw through 2010 Chap. 479); *V-130549 v. Superior Ct. of Arizona*, 871 P.2d 758 (Ariz. Ct. App. 1994).

[9] *See, e.g.,* Cal. Welf. & Inst. Code § 601(b) (West, Westlaw through 2009 Reg. Sess. laws; 2009-2010 1st through 5th, 7th, and 8th Ex. Sess. laws; urgency legislation through Ch. 711 of the 2010 Reg. Sess; and all Props. on 2010 ballots)) ("[I]f a minor has four or more truancies within one school year as defined in Section 48260 of the Education Code . . . the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court."); *In re Jamol F.*, 24 Misc. 3d 772 (N.Y. Fam. 2009) (nonattendance basis for allegations of educational neglect by parents).

[10] *See, e.g.,* Ariz. Rev. Stat. Ann. § 15-802 (West, Westlaw through Second Reg. Sess. and Ninth Sp.l Sess. of the 49th Legis. (2010)); N.C. Gen. Stat. §§ 115C-378, 115C-380 (West, Westlaw through 2010 Reg. Sess.); Tenn. Code Ann. § 49-6-3001 –3009 (West, Westlaw through 2010 First Ex. Sess. and Reg. Sess.). *See also* Dean Hill Rivkin, *Truancy Prosecutions and the Right [to] Education,* Duke F. for L. & Soc. Change *(*forthcoming*), available at* http://ssrn.com/ abstract=1675968.

The North Carolina Supreme Court reasoned that J.D.B. was not in custody because the restrictions of the school environment apply to all students. *Id.* at 138 (N.C. 2009). Such reasoning makes no sense, as it would make it virtually impossible for a court to find that a student in a school setting was ever in custody. The constitutional test does not ask whether an individual would have felt more at liberty to leave than his or her peers. It asks simply whether a person in that situation would feel free to leave. J.D.B. could not have felt free to leave while simultaneously complying with the school rules to which he was subject.

The North Carolina Supreme Court's rule would also leave students in a uniquely vulnerable situation in which law enforcement would conduct interrogations at school specifically to avoid complying with the Miranda rule:[11]

> Questioning the student at school, the officer not only takes advantage of the student's compulsory presence at school and the background norm of submission to authority, but also chooses to interact with the student at a time when the student will not be in the presence of a parent, the figure most likely to have the inclination or ability to either arrange for the presence of counsel or to advise

[11] This is in sharp contrast to the school acting "as guardian and tutor of children entrusted to its care," and therefore authorized, for example, to conduct special needs searches to maintain school safety. *Vernonia v. Acton,* 155 U.S. 646, 665 (1995).

> the youth to refuse to answer the officer's questions.

Paul Holland, *Schooling* Miranda: *Policing Interrogation in the Twenty-First Century Schoolhouse,* 52 Loy. L. Rev. 39, 85 n.175 (2006). That officers came to J.D.B.'s school to question him about an offense that took place during non-school hours and off school property underscores the problems with coercion of students and the importance of protecting youth in schools from such practices. In such situations, officers can use the school setting to circumvent the protection from coercion that a child would otherwise receive from his or her family.[12]

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[12] That many states require a parent's presence for such questioning underscores the importance of preserving the child/parent relationship and the protection from coercion that a minor can receive from his or her family. *See, e.g.*, Colo. Rev. Stat. Ann. § 19-2-511 (West, Westlaw through Second Reg. Sess. of the 67th Gen. Assembly (2010)); Conn. Gen. Stat. § 46b-137(a) (West, Westlaw through 2010 July Sp. Sess.); Ind. Code § 31-32-5-1 (West, Westlaw through 2010 Second Regular Sess.); Iowa Code Ann. § 232.11 (West, Westlaw through Acts from the 2010 Reg. Sess.); Kan. Stat. Ann. § 38-2333 (West, Westlaw through 2010 Reg. Sess.); Me. Rev. Stat. Ann. tit. 15 § 3203-A(2-A) (West, Westlaw through the 2009 Second Reg. Sess. of the 124th Legislature); Miss. Code Ann. § 43-21-303(3) (West, Westlaw through the 2010 Reg. and 1st Extraordinary Sess.); Mont. Code Ann. § 41-5-331 (West, Westlaw through all 2009 legislation); N.C. Gen. Stat. § 7B-2101 (West, Westlaw through 2010 Reg. Sess.); Okla. Stat. Ann. tit. 10A § 2-2-301 (West, Westlaw through 2010 Chap. 479); Tex. Fam. Code Ann. § 51.09 (West, Westlaw through 2009 Reg. and First Called Sess. of 81st Legis.); W.Va. Code § 49-5-2(l) (West, Westlaw current with Laws of the 2010 Second Extraordinary Sess.). *See also In the Matter of B.M.B.*, 955 P.2d 1302, 1312-13 (Kan. 1998);

Middle school is a "restrictive environment" in which "students are not free to leave the campus without permission," *In re J.D.B.,* 686 S.E.2d 135, 143 (N.C. 2009) (Brady, J., dissenting), and are unlikely to request their parents' assistance – even in a highly stressful situation. The majority below established a rule that would further allow police to exploit the school setting. Given that children are more susceptible to coercion than adults, this rule puts them in a particularly vulnerable position. While such tactics would be inappropriate regardless of the context, they are particularly troubling where, as here, the student posed no risk of disruption or threat to school safety. [13]

B. Students in School Settings Are Particularly Susceptible to Coercion.

This Court's jurisprudence recognizes not only that youth generally are more susceptible to coercion than adults, but also that youth *in school settings* are particularly susceptible to coercion. Under the First Amendment, for example, this Court has held that students require unique protections. In *Lee v. Weisman*, this Court held that primary and secondary school children should not be put in the position of having to choose between participating in a school prayer or protesting, even though such a choice may be acceptable for mature adults,

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M.A.C. v. Harrison County Family Court, 566 So.2d 472, 475 (Miss. 1990).

[13] In fact, removing J.D.B. from class caused more disruption to the school than questioning him in a less restrictive, more neutral environment, such as his home.

explaining that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." 505 U.S. 577, 592-93 (1992). *See also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (finding that where a prayer was delivered before school football games, the school created a coercive situation in which students were unconstitutionally forced to choose between ignoring the pressure to attend the game or facing a personally offensive religious ritual). *See also Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987) (finding a Louisiana law proscribing the teaching of creationism along with evolution in public schools unconstitutional, because "[s]tudents in such institutions are impressionable and their attendance is involuntary"); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 115 (2001) (finding religious afterschool club at elementary school did not violate constitution in part because the club, unlike school, was not mandatory, met after school hours, and required parental permission).

Social science research has also shown the vulnerabilities of youth in school settings. Conflicts with authority are more likely to elicit feelings of powerlessness in younger children; this perception diminishes with increasing age. Lila Ghent Braine et al., *Conflicts with Authority: Children's Feelings, Actions, and Justifications*, 27 Developmental Psychol. 829, 839 (1991). Youth may comply with demands by teachers or police officers based on a blanket acceptance of authority instead of reasoning

about the individual request.[14] In school settings particularly, students may place greater weight on the authority of the adults they encounter. Indeed, "children judge that holding a social position . . . is one attribute that legitimizes a teacher's directives within the social context of the school"[15] Thus a child like J.D.B. would be likely to place greater weight on the authority of police officers in the company of school authority figures. The school environment increased the coercive effect of the police interrogation and left J.D.B. more vulnerable and fearful, and thus less able to terminate the interrogation.

III. A Suspect's Age Provides the Police with an Objective Standard by which to Determine Whether an Individual is in Custody.

In *Yarborough*, the Court highlighted the importance of providing "clear guidance to the police." *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004) . Requiring the consideration of age furthers, rather than frustrates, this concern. First, age is an objective, categorical classification rather than a personal idiosyncrasy. Second, in the majority of states, police officers are already required by statute

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[14] *Id.* at 835 (in studying children's views of and compliance with authority, researchers have found that social context enhances a child's perception of authority and that children tend to give a blanket acceptance to authority figures).

[15] *See* Marta Laupa & Elliot Turiel, *Children's Concepts of Authority and Social Contexts*, 85 J. of Educational Psychol. 191, 191 (1993).

or case law to take age into consideration during interrogations. Finally, many police manuals themselves require the consideration of age during interrogations.[16]

A. Age is a Categorical Consideration Contemplated by the *Miranda* Custody Determination

This Court has clarified that the circumstances of the interrogation alone do not determine whether a suspect is in custody for *Miranda* purposes. *See, e.g., Oregon v. Mathaison*, 429 US 492, 495 (1977) (holding that an adult's presence in a police station was not in itself determinative evidence of coercion requiring *Miranda* warnings); *Berkemer v. McCarty*, 468 U.S. 420, 436-439 (1984) (holding that a traffic stop was not custodial because it was brief, in person, and the person stopped would be reasonably sure that he would leave in the car).

In fact, the Court has been clear that the rule must adequately protect those with particular vulnerabilities. In *Miranda* itself, this Court recognized the critical importance of ensuring that

[16] Moreover, while there may be cases in which police officers are mistaken about a suspect's age, a "reasonable police officer" standard would easily address this. If a suspect lies about his or her age, for example, and an officer fails to issue *Miranda* warnings, that evidence would be admissible. Furthermore, the consequences of this rule are not severe — they don't prevent officers from interrogating youth. They simply require police to treat the child as if he or she is in custody.

police do not give in to "the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions." 384 U.S. 436 at 443 (citing *Brown v. Walker*, 161 U.S. 591, 596-97 (1896)). By referring to the "timid or reluctant" suspect, the Court noted the importance of creating a rule that would protect vulnerable suspects.

To be sure, the custody rule cannot require officers to guess at the "frailties or idiosyncracies of every person whom they question." *Berkemer*, 468 U.S. at 442 n.35 (internal citations omitted). Thus a suspect's criminal past and police record are not relevant to the custody determination as they are "unknowable to the police." *Id.* at U.S. at 430-32. Such matters would require police to know about or guess at the individual's unique personal history.

In contrast, a subject's age is not an individual frailty or idiosyncrasy. It is an easily identifiable, categorical and objective factor for the police to consider. As Justice Breyer observed in his dissent in *Yarborough,* age "is not a special quality, but rather a widely shared characteristic that generates commonsense conclusions about behavior and perception" — age can be easily appraised. *Yarborough,* 541 U.S. at 674 (Breyer, J., dissenting). Failure to account for such categorical distinctions could lead to highly problematic results. A reasonable blind suspect cannot be expected to read a typed document advising him that he is free to leave. A reasonable deaf suspect cannot be expected to have heard an oral warning. Similarly, a reasonable child cannot be expected to understand his options in the same way that an adult would.

This approach is well in keeping with the use of the "reasonable person" standard in other contexts. As Justice Breyer further noted:

> the precise legal definition of "reasonable person" may, depending on legal context, appropriately account for certain personal characteristics. In negligence suits, for example, the question is what would a "reasonable person" do "'under the same or similar circumstances.'" In answering that question, courts enjoy "latitude" and may make "allowance not only for external facts, but sometimes for certain characteristics of the actor himself," including physical disability, youth, or advanced age.

Id. at 674 (Breyer J., dissenting) (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* § 32, 174-79 (5th ed. 1984). Similarly, the Restatement (Second) of Torts clarifies that "*Unless the actor is a child*, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under like circumstances." Restatement (Second) of Torts, § 283 (1965) (emphasis added).

An adolescent's age is a categorical and objective factor appropriate for consideration in the *Miranda* custody determination.

B. Many States Already Require Consideration of the Suspect's Age During Police Interrogations

The majority of states recognize, either by statute or case law, that youth need special protections during interrogations. In many states, the rules specifically require the consideration of age during custodial interrogations. At least eighteen state statutes[17] and twelve appellate decisions[18]

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[17] *See e.g.*, Ala. Code 1975 § 12-15-202 (West, Westlaw through 2010 Reg. Sess.); Ark. Code Ann. § 9-27-317(i)(2) (West, Westlaw through changes made by Ark. Code Rev. Comm. through September 2010); Colo. Rev. Stat. Ann. § 19-2-511 (West, Westlaw through Second Reg. Sess. of 2010); Conn. Gen. Stat. § 46b-137(a) (West, Westlaw through 2010 July Sp. Sess.); Ga. Code Ann., § 15-11-7 (West, Westlaw through 2010 Reg. Sess.); Ind. Code § 31-32-5-1 (West, Westlaw through 2010 Second Reg. Sess.); Iowa Code Ann. § 232.11 (West, Westlaw through Acts from the 2010 Reg. Sess.); Kan. Stat. Ann. § 38-2333 (West, Westlaw through 2010 Reg. Sess.); Me. Rev. Stat. Ann. tit. 15 § 3203-A(2-A) (West, Westlaw through the 2009 Second Reg. Sess.); Miss. Code Ann. § 43-21-303(3) (West, Westlaw through the 2010 Reg. and 1st Extraordinary Sess.); Mont. Code Ann. § 41-5-331(2) (West, Westlaw through all 2009 legislation); Mo. Ann. Stat. § 211.059 (1) & (2) (West, Westlaw through the end of the 2010 First Extraordinary Sess., pending corrections received from the MO Revisor of Stat.); N.C. Gen. Stat. § 7B-2101 (West, Westlaw through 2010 Reg. Sess.); N.D. Cent. Code Ann., 27-20-27(2) (West, Westlaw through the 2009 Reg. Sess.); N.M. Stat. Ann. 1978 § 32A-2-14 (D) & (E) (West, Westlaw through the Second Reg. Sess. and the Second Sp. Sess. of 2010); N.Y. Fam. Ct. Act Law § 305.2 (7) & (8) (McKinney, Westlaw through L.2010, chap. 1 to 59 & 61 to 481); Okla. Stat. Ann. tit. 10A, § 2-2-301 (West, Westlaw through 2010 Chap. 479); Tex. Fam. Code Ann. § 51.09 (West, Westlaw through 2009 Reg. and First Called Sess. of 81st Legis.); W.Va.

require special practices for the interrogation of adolescents. In many of these states, age is an explicit component of the custody determination.

In a number of states, courts have established that the test is "whether, based upon the objective circumstances, a reasonable child of the same age would believe her freedom of movement was significantly restricted." *In re L.M.*, 993 S.W.2d 276, 288-89 (Tex. App. 1999). *See also People v. Ward*, 95 A.D.2d 351, 353-54 (N.Y. App. Div. 1983) ("the reasonable perceptions of a child must be judged by a standard which takes into account the emotional and intellectual immaturity of a juvenile" and "the age of the juvenile must be considered a major factor."); *Ramirez v. State,* 739 So.2d 568, 574 (Fla. 1999) ("not only a reasonable juvenile, but even a reasonable adult in Ramirez's position, would have believed that he was in custody. . .").[19]

Code § 49-5-2(l) (West, Westlaw current with Laws of the 2010 Second Extraordinary Sess.).

[18] *In re Jorge D.*, 43 P.3d 605 (Ariz. Ct. App. 2002); *People v. T.C.,* 898 P.2d 20 (Colo. 1995) (en banc); *Ramirez v. State,* 739 So.2d 568, 574 (Fla.1999); *State v. Doe*, 948 P.2d 166, 173 (Idaho Ct. App. 1997); *In re Joshua David C.*, 698 A.2d 1155, 1162 (Md. Ct. Spec. App. 1997); *Commonwealth v. A Juvenile,* 521 N.E.2d 1368, 1370 (Mass. 1988); *In re D.R.M.S.*, No. A05-2471, 2006 WL 3361948 (Minn. Ct. App. Nov. 21, 2006); *People v. Garcia,* 103 A.D.2d 753 (N.Y. App. Div. 1984); *In re Loredo,* 865 P.2d 1312, 1315 (Or. Ct. App. 1993); *In re L.M.*, 993 S.W.2d 276, 288-89 (Tex. App. 1999); *In re K.W.,* No. 9-08-57, 2009 WL 1845240, at * 6 (Ohio Ct. App. June 29, 2009); *State v. D.R.*, 930 P.2d 350 (Wash. App. 1997).

[19] *See also In re Loredo,* 865 P.2d at 1315. Although the Court ultimately determined that the child was not in custody because the officer explicitly informed him that he was free to leave, was not under arrest, and did not have to speak – and made an

An even greater number of state courts have held that age must be taken into account as one of the circumstances in the "totality of the circumstances" test. For example, the Idaho Court of Appeals explained:

> [T]he objective test for determining whether an adult was in custody for purposes of *Miranda,* giving attention to such factors as the time and place of the interrogation, police conduct, and the content and style of the questioning, applies also to juvenile interrogations, but with additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult.

State v. Doe, 948 P.2d 166, 173 (Idaho Ct. App. 1997). Courts around the country have applied a similar analysis. [20]

Still other jurisdictions proscribe the interrogation of a child by law enforcement in the

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effort to be "unimposing." The Court did establish that the custody determination depended on "whether a reasonable person in child's position — that is, a child of similar age, knowledge and experience, placed in a similar environment — would have felt required to stay and answer." *Id.*

[20] *See, e.g., In re Jorge D.,* 43 P.3d 605, 608-09 (Ariz. Ct. App. 2002); *People v. Howard*, 92 P.3d 445, 450 (Colo. 2004); *In re Joshua David C.*, 698 A.2d 1155, 1162 (Md. Ct. Spec. App. 1997); *In re D.R.M.S.*, No. A05-2471, 2006 WL 3361948 (Minn. Ct. App. Nov. 21, 2006); *In re Loredo,* 865 P.2d 1312, 1315 (Or. Ct. App. 1993); *In re L.M.*, 993 S.W.2d 276, 288-89 (Tex. App. 1999); *State v. D.R.*, 930 P.2d 350 (Wash. App. 1997); *CSC v. State*, 118 P.3d 970, 977, 978 (Wyo. 2005).

absence of a parent,[21] or require the parents to be informed of the child's questioning or arrest.[22] Many of these states also require that the parent receive information about the child's *Miranda* rights.[23] These parental involvement and notification statutes necessarily assume that an officer can and will

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[21] Colo. Rev. Stat. Ann. § 19-2-511(West, Westlaw through Second Reg. Sess. of 2010); Conn. Gen. Stat.§ 46b-137 (West, Westlaw through 2010 July Sp. Sess.); Kan. Stat. Ann. § 38-2333(a) (West, Westlaw through 2010 Reg. Sess.) (pertaining to interrogations of juveniles under the age of 14); Me. Rev. Stat. Ann. tit. 15 § 3203-A(2-A) (West, Westlaw through the 2009 Second Reg. Sess.) (establishing that no law enforcement officer may question a juvenile until the legal custodian is notified and is present or gives consent to questioning to continue. If officers cannot locate the custodian after reasonable efforts, they may continue questioning a juvenile about "continuing or imminent criminal activity"); N.Y. Fam. Ct. Act Law § 305.2(7) (McKinney, Westlaw through L.2010, chap. 1 to 59 and 61 to 481); Okla. Stat. Ann. tit. 10A, § 2-2-301(A) (pertaining to confessions of juveniles under the age of 16) (West, Westlaw through 2010 Chap. 479). Other states require that parents be present for a valid waiver of rights, Iowa Code Ann. § 232.11(2) (West, Westlaw through Acts from the 2010 Reg Sess.).

[22] *See, e.g.,* 18 U.S.C.A. § 5033 (West, Westlaw through P.L. 111-264 approved 10-8-10). Cal.Welf. & Inst.Code § 627(West, Westlaw through 2009 Reg. Sess. laws; 2009-2010 1st through 5th, 7th, and 8th Ex. Sess. laws; urgency legislation through Ch. 711 of the 2010 Reg. Sess; and all Props. on 2010 ballots); Mo. Ann. Stat. §211.059(1)(3) (West, Westlaw through the end of the 2010 First Extraordinary Sess. of the 95th Gen. Assembly, pending corrections received from the MO Revisor of Stat.); N.C. Gen. Stat. Ann. § 7B-2101(a) (West, Westlaw through 2010 Reg. Sess.).

[23] *See* Conn. Gen. Stat.§ 46b-137(b) (West, Westlaw through 2010 July Sp. Sess.); Okla. Stat. Ann. tit. 10A, § 2-2-301 (pertaining to the interrogation of youth under sixteen years of age) (West, Westlaw through 2010 Chap. 479); W.Va. Code Ann. § 49-5-2(l) (West, Westlaw current with Laws of the 2010 Second Extraordinary Sess.).

determine whether the suspect is a minor and therefore deserving of these additional protections. Likewise, in other states which require that an officer administer *Miranda* warnings in "language understandable to a child,"[24] it is presumed, at the very least, that officers must be aware of the age of the youth and modify their interrogation procedures accordingly. Moreover, officers must routinely consider a child's age at the time of interrogation to enforce certain laws, such as truancy laws or curfew laws, or to direct the child's case for juvenile or adult prosecution.[25]

Police manuals further reinforce these practices. These manuals, like the rule proposed here, require police to assess a child's age before interrogating him or her. The Florida Highway Patrol Manual, for example, requires officers to contact a juvenile's family and allow family members to be present and involved during interrogations; limits the number of police officers permitted to interrogate a juvenile; limits the length of an interrogation; and requires regular breaks for the juvenile.[26] None of these rules

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[24] *See, e.g.,* Ala. Code 1975§ 12-15-202(a) (West, Westlaw through 2010 Reg. Sess.); Ark. Code Ann. § 9-27-317 (West, Westlaw through changes made by Ark. Code Rev. Comm. through September 2010).

[25] *See, e.g.,* Fla. Stat. Ann. § 985.125(4) (West, Westlaw through Chap. 274 of 2010 Second Reg. Sess. and Chap. 282 of 2010 Special "A" Session) (outlining officers' authority to make pre-arrest diversion determinations); D.C. Juv. Ct R. 102-3 (designating diversion authority to police officers at the point of initial contact with minors, this discretion is unique to minor offenders).

[26] Florida Highway Patrol, *Florida Highway Patrol Policy Manual*, 11.03 (2008), *available at* http://www.flhsmv.gov/fhp/Manuals/. For another example, *see*

could be met without consideration, and indeed inquiry into the child's age at the outset. The manual of the Cincinnati Police Department requires that "when dealing with juvenile offenders, it is the policy of the Police Department to employ the least coercive of the enforcement directives available to properly address the situation." Cincinnati Police Department, *Cincinnati Police Department Procedure Manual,* Section 12.900 (2010), *available at* http://www.cincinnati-oh.gov/police/pages/-5960-/.[27]

Significantly, the Chapel Hill police manual applicable in this case was no exception. The manual provides that "[e]ven if the juvenile is not in custody, it is good practice to have him sign a Miranda Rights waiver form before issuing a statement. If the juvenile does not sign a waiver, the officer must document that the juvenile is told that he is not under arrest and free to leave at any time, and that he agreed to talk." Chapel Hill Police Dep't, Policy Manual No. 2-12 (*Juvenile Response*), at 4 (Dec. 15, 2006 (revised)). A rule requiring police to assess a

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the Minneapolis Police Department, *Policy and Procedures Manual* 8-107 (2008), *available at* http://www.ci.minneapolis.mn.us/mpdpolicy (directing officers to advise all juveniles of their *Miranda* rights, to consider their age and their capacity to understand those rights, and to allow a parent or guardian to be present, if their presence is not deemed coercive or intimidating).

[27] The manual also directs officers questioning youth to limit the number of officers present, provide additional explanations of the juvenile justice system to the juvenile's parent/guardian, notify a juvenile's parents, and limit the length of questioning as appropriate to the physical and emotional condition to the juvenile. *Id.* at section 12.900.D.9a(3).

suspect's age at the time of interrogation not only provides clear guidance to police, it also reflects prevailing practice in the jurisdictions nationwide.

CONCLUSION

Age is an objective factor that police can and routinely do consider in determining whether a suspect is in custody for *Miranda* purposes. Youth are categorically different from adults. Holding them to the adult standard for the purpose of the *Miranda* custody determination is contrary to sound research and to this Court's long-standing acknowledgement that youth must be taken into account when interpreting provisions and mandates of the Constitution. For the foregoing reasons, *Amici Curiae* respectfully request that this Court reverse the decision of the North Carolina Supreme Court and hold that the *Miranda* custody inquiry must take into account the age of an adolescent suspect.

Respectfully submitted,

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Appendix A Table of Contents

Appendix A

Identity of Amici and Statements of Interest

Individuals

Tamar Birckhead is an assistant professor of law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the criminal lawyering process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the United States as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is vice president of the board for the North Carolina Center on Actual Innocence and has been appointed to the executive council of the Juvenile Justice and Children's Rights Section of the North Carolina Bar Association. Professor Birckhead received her B.A. degree in English literature with honors from Yale University and her J.D. with honors from Harvard Law School, where she served as Recent Developments Editor of the Harvard Women's Law Journal. She regularly consults on matters within the scope of her scholarly expertise, including issues related to juvenile justice policy and reform, criminal law and procedure, indigent criminal defense, and clinical legal education. She is frequently asked to assist litigants, advocates, and scholars with amicus briefs, policy papers, and expert

testimony, as well as specific questions relating to juvenile court and delinquency.

Jeffrey Fagan is a Professor of Law and Public Health at Columbia University, and Director of the Center for Crime, Community and Law at Columbia Law School. He currently is Fellow at the Straus Institute for the Advanced Study of Law and Justice, at New York University School of Law. He was a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Professor Fagan is currently conducting research on several dimensions of juvenile law and juvenile justice, including the competence and culpability of adolescents facing transfer to the criminal court, and the impacts of transfer and adult punishment on adolescent development. He also is conducting research on the impacts of involuntary police contacts with juveniles on their perceptions of law and justice. He has also conducted research on the death penalty for persons who commit capital offenses before their 18th birthday, and for sentences of life without the possibility of parole for persons who commit crime before their 18th birthday; this research suggests that the developmental limitations of adolescents may compromise their capacity for full participation in legal proceedings when the harshest forms of punishment are at stake, whether in criminal or juvenile court. Professor Fagan has conducted research on capital punishment, and his research has shown that false confessions are often a cause of wrongful conviction and reversible error. Accordingly, he agrees to sign this amicus brief to assist in defining standards and procedures for

assessing the age-based competence of adolescents during interactions with police and law enforcement authorities when they may be asked to participate in interrogations without their full knowledge or consent.

Barbara Fedders is a clinical assistant professor at the University of North Carolina School of Law. Prior to joining the UNC faculty in January 2008, Professor Fedders was a clinical instructor at the Harvard Law School Criminal Justice Institute for four years. Prior to that, she worked for the Massachusetts Committee for Public Counsel Services as a Soros Justice Fellow and staff attorney. She began her career in clinical work at the Juvenile Rights Advocacy Project at Boston College Law School. As a law student, Professor Fedders was a Root-Tilden-Snow scholar and co-founded the NYU Prisoners' Rights and Education Project. She is a member of the advisory boards of the Prison Policy Initiative and the Equity Project.

Barry Feld is Centennial Professor of Law, University of Minnesota Law School. He received his B.A. from the University of Pennsylvania; his J.D. from University of Minnesota Law School; and his Ph.D. in sociology from Harvard University. He has written eight books and about seventy law review and criminology articles and book chapters on juvenile justice with a special emphasis on serious young offenders, procedural justice in juvenile court, adolescents' competence to exercise and waive Miranda rights and counsel, youth sentencing policy, and race. One of his earliest books, Neutralizing Inmate Violence: Juvenile Offenders in Institutions

(Ballinger 1976), studied ten different juvenile correctional programs and the impact of institutional security practices on social control. His most recent books include: Bad Kids: Race and the Transformation of the Juvenile Court (Oxford 1999), which received the Outstanding Book Award from the Academy of Criminal Justice Sciences and the Michael Hindelang Outstanding Book Award from the American Society of Criminology; Cases and Materials on Juvenile Justice Administration (West 2000; 2nd Ed. 2005); and Juvenile Justice Administration in a Nutshell (West 2002). Feld has testified before state legislatures and the U. S. Senate, spoken on various aspects of juvenile justice administration to legal, judicial, and academic audiences in the United States and internationally. He worked as a prosecutor in the Hennepin County (Minneapolis) Attorney's Office and served on the Minnesota Juvenile Justice Task Force (1992 -1994), whose recommendations the 1994 legislature enacted in its revisions of the Minnesota juvenile code. Between 1994 and 1997, Feld served as Co-Reporter of the Minnesota Supreme Court's Juvenile Court Rules of Procedure Advisory Committee.

Theresa Glennon is the Feinberg Professor of Law at the James E. Beasley School of Law at Temple University. She conducts research and writing and teaches in the areas of education law, family law and disability. Her scholarship includes a focus on issues concerning children. She served as a staff attorney at the Education Law Center-Pennsylvania from 1985-1989, prior to entering legal academia, where she focused on the legal rights of students with disabilities. She is currently a

member of the Board of Trustees of the Education Law Center of Pennsylvania, a volunteer mediator for custody disputes in the Philadelphia Family Court, and a member of the Institutional Review Board for Public/Private Ventures, which reviews research proposals for educational, afterschool and other social services programs involving teenagers and others in order to ensure the protection of human subjects.

Martin Guggenheim is the Fiorello La Guardia Professor of Clinical Law at N.Y.U. Law School, where he has taught since 1973. He served as Director of Clinical and Advocacy Programs from 1988 to 2002 and also was the Executive Director of Washington Square Legal Services, Inc. from 1987 to 2000. He has been an active litigator in the area of children and the law and has argued leading cases on juvenile delinquency and termination of parental rights in the Supreme Court of the United States. He is also a well-known scholar whose books include "What's Wrong with Children's Rights" published by Harvard University Press in 2005 and "Trial Manual for Defense Attorneys in Juvenile Court," published by ALI-ABA in 2007 which was co-authored with Randy Hertz and Anthony G. Amsterdam. He has won numerous national awards including in 2006 the Livingston Hall Award given by the American Bar Association for his contributions to juvenile justice.

Professor Kristin Henning joined the faculty of the Georgetown Law Center in 1995 as a Stuart-Stiller Fellow in the Criminal and Juvenile Justice Clinics. As a Fellow she represented adults and children in the D.C. Superior Court, while

supervising law students in the Juvenile Justice Clinic. In 1997, Professor Henning joined the staff of the Public Defender Service (PDS) for the District of Columbia where she continued to represent clients and helped to organize a Juvenile Unit designed to meet the multi-disciplinary needs of children in the juvenile justice system. Professor Henning served as Lead Attorney for the Juvenile Unit from 1998 until she left the Public Defender Service to return to Georgetown in 2001. As lead attorney, she represented juveniles in serious cases, supervised and trained new PDS attorneys, and coordinated and conducted training for court-appointed attorneys representing juveniles.

Professor Henning has been active in local, regional and national juvenile justice reform, serving on the Board of the Mid-Atlantic Juvenile Defender Center, the D.C. Department of Youth Rehabilitation Services Advisory Board and Oversight Committee, and on local D.C. Superior Court committees such as the Delinquency Working Group and the Family Court Training Committee. She has published a number of law review articles on the role of child's counsel, the role of parents in delinquency cases, confidentiality in juvenile courts, and therapeutic jurisprudence in the juvenile justice system. She is also a lead contributor to the *Juvenile Law and Practice* chapter of the District of Columbia Bar Practice Manual and has participated as an investigator in eight state assessments of the access to counsel and quality of representation for juveniles.

Kris Henning received her undergraduate degree from Duke University, a J.D. from Yale Law

School in 1995, and an LL.M. degree from Georgetown University Law Center in 2002. In 2005, Kris was selected as a Fellow in the Emerging Leaders Program of the Duke University Terry Sanford Institute of Public Policy and the Graduate School of Business at the University of Cape Town, South Africa. Professor Henning also traveled to Liberia in 2006 and 2007 to aid the country in juvenile justice reform and was awarded the 2008 Shanara Gilbert Award by the Clinical Section of the Association of American Law Schools in May for her commitment to social justice, service to the cause of clinical legal education, and an interest in international clinical legal education.

Barry A. Krisberg is currently a Senior Fellow and Lecturer in Residence at the University of California, Berkeley School of Law and was recently a Visiting Scholar at John Jay College in New York City.

He is known nationally for his research and expertise on juvenile justice issues and is called upon as a resource for professionals, foundations, and the media.

Dr. Krisberg received his master's degree in criminology and a doctorate in sociology, both from the University of Pennsylvania.

Dr. Krisberg has held several educational posts. He was a faculty member in the School of Criminology at the University of California at Berkeley. He was also an adjunct professor with the Hubert Humphrey Institute of Public Affairs at the

University of Minnesota and the Department of Psychiatry at the University of Hawaii.

Dr. Krisberg was appointed by the legislature to serve on the California Blue Ribbon Commission on Inmate Population Management.. He is past president and fellow of the Western Society of Criminology and is the Chair of the California Attorney General's Research Advisory Committee. In 1993 he was the recipient of the August Vollmer Award, the American Society of Criminology's most prestigious award. The Jessie Ball duPont Fund named him the 1999 Grantee of the Year for his outstanding commitment and expertise in the area of juvenile justice and delinquency prevention. Dr. Krisberg was appointed to chair an Expert Panel to investigate the conditions in the California youth prisons. He has recently been named in a consent decree to help develop remedial plans and to monitor many of the mandated reforms in the California Division of Juvenile Justice. He has also assisted the Special Litigation Branch of the USDOJ on CRIPA investigations. He has been retained by the New York State Office of Children and Family Services to assist in juvenile justice reforms.

Edward D. Ohlbaum is Professor of Law and Director of Trial Advocacy and Clinical Legal Education at Temple Law School. He was awarded the prestigious Richard S. Jacobson Award, given annually by the Roscoe Pound Foundation to one professor for "demonstrated excellence in teaching trial advocacy" in 1997. The architect of Temple's unique L.L.M. in Trial Advocacy, his programs have won awards from the American College of Trial

Lawyers and the Committee on Professionalism of the American Bar Association. The author of three books, Professor Ohlbaum is a frequent speaker on evidence and advocacy at key international and domestic conferences. He serves on the Board of the Support Center for Child Advocacy is actively involved in representing children in termination of parental rights cases. He is a former senior trial lawyer with the Defender Association of Philadelphia.

Professor **Jane M. Spinak** is the Edward Ross Aranow Clinical Professor of Law at Columbia Law School. In 1982, she co-founded the Child Advocacy Clinic at Columbia which currently represents adolescents aging out of foster care. During the mid-1990s, Professor Spinak served as attorney-in-charge of the Juvenile Rights Division of The Legal Aid Society of New York City, one of the nations' leading organizations in the field of child advocacy. In 2005, Professor Spinak was named a Human Rights Hero for her work on behalf of children by the ABA's Human Rights Magazine. In 2008 she was awarded the Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare by the New York State Bar Association. Professor Spinak is currently co-chairing the Task Force on Family Court in New York City established by the New York County Lawyer's Association.

The Child Advocacy Clinic has provided representation to children and youth in the child welfare system for almost thirty years. The Adolescent Representation Project (ARP) focuses on the distinct needs of youth aging out of foster care,

taking into consideration the special aspects of youth that distinguishes them from adults, including their development and limited range of experiences. The issues facing these youth extend across a broad spectrum of need, including housing and homelessness prevention, teen parenting, health and health benefits, income and support benefits, education, tuition and financial aid benefits, financial planning, civil rights, including LGBTQ issues, job training and career planning, and domestic violence. One project of the ARP is an interdisciplinary investigation into how representation of adolescents is different than representation of younger children or adults.

Organizations

Advocates for Children's Services (ACS) is a statewide project of Legal Aid of North Carolina, a federally funded 501(c)3 organization. ACS represents poor and low income children who are deprived of their federal and state rights to necessary services, particularly their fundamental state constitutional right to a sound basic education and their federal right to special education.

Many ACS clients face unjustified long term school suspensions and then referrals to delinquency or adult criminal court. Police, known as School Resource Officers, are armed and present in most middle schools and high schools. The issue of interrogations in the school setting and what rules should regulate that process is of significant interest to ACS.

The **Barton Child Law & Policy Clinic** is a program of Emory Law School dedicated to ensuring safety, well-being and permanency for abused and court-involved children in Georgia. These outcomes are best achieved when systems only intervene in families when absolutely necessary, treat children and families fairly, provide the services and protections they are charged to provide, and are accountable to the public and the children they serve. The mission of the clinic is to promote and protect the well-being of neglected, abused and court-involved children in the state of Georgia, to inspire excellence among the adults responsible for protecting and nurturing these children, and to prepare child advocacy professionals.

The Barton Clinic was founded in March 2000. The Barton Clinic has been involved in representation of juveniles in delinquency cases since the summer of 2001. Initially, such representation occurred in collaboration with the Southern Juvenile Defender Center, which was housed in the Barton Clinic until 2005. The Barton Clinic currently houses the Barton Juvenile Defender Clinic (JDC), which was founded in 2006.

The JDC provides a clinical experience for third year law students in the juvenile court arena. The focus of the clinical experience is to provide quality representation to children by ensuring fairness and due process in their court proceedings and by ensuring courts make decisions informed by the child's educational, mental health and family systems objectives. As part of their clinical experience, student attorneys represent child clients

in juvenile court and provide legal advocacy in the areas of school discipline, special education, mental health and public benefits, when such advocacy is derivative of a client's juvenile court case. Students also engage in research and participate in the development of public policy related to juvenile justice issues.

Legal services provided by the Barton Clinic are provided at no cost to our clients.

The **Center on Children and Families** (CCF) at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil Hawkins Civil Clinic and Gator TeamChild juvenile law clinic.

The **Central Juvenile Defender Center**, a training, technical assistance and resource development project, is housed at the Children's Law Center, Inc. In this context, it provides assistance on indigent juvenile defense issues in Ohio, Kentucky,

Tennessee, Indiana, Arkansas, Missouri, and Kansas.

Citizens United for Rehabilitation of Errants (CURE) is a national grassroots criminal justice reform organization. We work to reduce the number of people who are incarcerated and to ensure that those who are incarcerated are provided with the resources they need to turn their lives around. Ensuring due process and adequate representation is critical if we are to ensure that people are not incarcerated unnecessarily. We are convinced that juveniles need special protections because of their limited understanding of the criminal justice system and because their developmental status often leads to poor judgment.

The ***Civitas* ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

The **Children's Law Center, Inc.** in Covington, Kentucky has been a legal service center

for children's rights since 1989, protecting the rights of youth through direct representation, research and policy development and training and education. The Center provides services in Kentucky and Ohio, and has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education and zero tolerance issues within schools, and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children.

Founded in 1977, the **Children's Law Center of Massachusetts (CLCM)** is a private, non-profit legal services agency that provides direct representation and appellate advocacy for indigent children in juvenile justice, child welfare and education matters. CLCM's mission is to promote and secure equal justice and to maximize opportunity for low-income children and youth Further, the CLCM is committed to assuring children's age and developmental factors are considered by decision makers when imposing policies or penalties that impact children's lives. This case presents questions of significance both to the children who are involved in the justice system and to the attorneys who represent them. The *amici* hope their views will add to the Court's consideration of the issues raised in this appeal.

The **Education Law Center - PA** is a public-interest organization dedicated to ensuring that all Pennsylvania children have access to a quality public education. Founded in 1975, ELC-PA focuses primarily on the needs of poor children, children

in the child welfare system, children with disabilities, English language learners, and others who are often at a disadvantage in the public education system. ELC has represented many children charged by the police with school-based misconduct. ELC seeks to participate as *amicus* in order to share our views concerning the application of *Miranda* to the school situation.

Formed in 1997, the **Justice Policy Institute (JPI)** is a policy development and research body which promotes effective and sensible approaches to America's justice system. JPI has consistently promoted a rational criminal justice agenda through policy formulation, research, media events, education and public speaking. Through vigorous public education efforts, JPI has been featured in the national media. The Institute includes a national panel of advisors to formulate and promote public policy in the area of juvenile and criminal justice. JPI conducts research, proffers model legislation, and takes an active role in promoting a rational criminal justice discourse in the electronic and print media.

Juvenile Law Center, founded in 1975, is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and

services they need to become healthy and productive adults. Juvenile Law Center works to ensure that law enforcement practices comport with principles of adolescent development. Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. We provide holistic advocacy through teams of attorneys and social workers in the area of abuse and neglect, immigration and education. We empower clients by actively involving them in critical decisions about their lives. We believe that all legal decisions and actions involving children and youth must take research on child development and the unique needs of children into account.

Founded in 1977, the **National Association of Counsel for Children (NACC)** is a 501(c)(3) non-profit child advocacy and professional membership association dedicated to enhancing the well being of America's children. The NACC works to strengthen the delivery of legal services to children, enhance the quality of legal services affecting children, improve courts and agencies serving children, and advance the rights and

interests of children. NACC programs which serve these goals include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office program, policy advocacy, and the amicus curiae program. Through the amicus curiae program, the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States. The NACC uses a highly selective process to determine participation as amicus curiae. Amicus cases must past staff and Board of Directors review using the following criteria: the request must promote and be consistent with the mission of the NACC; the case must have widespread impact in the field of children's law and not merely serve the interests of the particular litigants; the argument to be presented must be supported by existing law or good faith extension the law; there must generally be a reasonable prospect of prevailing. The NACC is a multidisciplinary organization with approximately 2000 members representing all 50 states and the District of Columbia. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented.

The **National Black Law Students Association (NBLSA)** is a 501(c)(3) corporation and the nation's largest student-run organization representing nearly 6,000 minority law students from approximately 200 chapters and affiliates throughout the United States and six other countries. Founded in 1968, NBLSA was created and

designed to advocate for changes within the legal system that will make it more responsive to the needs and concerns of the Black community. The organization's 2010-2011 Child Advocacy and Empowerment initiative aims to raise awareness about the unique challenges for youth in the criminal justice system and combat the disproportionate contact that minority youth have with the juvenile justice system.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

The National Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **Northeast Juvenile Defender Center (NRJDC)** is dedicated to increasing access to justice for and the quality of representation afforded to children caught up in the juvenile and criminal justice systems. Housed jointly at Rutgers Law School - Newark and the Defender Association of Philadelphia, the NRJDC provides training, support, and technical assistance to juvenile defenders in Pennsylvania, New Jersey, New York, and Delaware. The NRJDC also works to promote effective and rational public policy in the areas of juvenile detention and incarceration reform, disproportionate confinement of minority children, juvenile competency and mental health, and the special needs of girls in the juvenile justice system.

The **Rutgers Urban Legal Clinic**, a clinical program of Rutgers Law School – Newark, was established over thirty years ago to assist low-income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic's Criminal and Juvenile Justice section provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. In recent years, ULC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House – New Jersey, staff of the New Jersey State Legislature, and a host of national organizations on a range of juvenile justice practice and policy issues, including questions pertaining to

the due process and fourth amendment rights of young people.

The **Sentencing Project** is a national non-profit organization engaged in research and advocacy on criminal justice and juvenile justice policy. Policy research conducted by The Sentencing Project is widely cited in academic and professional circles, and staff of the organization are regularly invited to testify before Congress, the U.S. Sentencing Commission, and state legislative bodies. The organization has published widely on issues of sentencing policy, racial disparity, juvenile justice policy, and the impact of incarceration on public safety, as well as submitting amicus briefs to the U.S. Supreme Court on sentencing policy and juvenile life without parole.

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of children at risk of or involved in the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. They have provided training, technical assistance, research and written materials to juvenile justice officials in almost every state. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. The Center has long been involved in public policy discussions, legislation and court challenges involving the treatment of juveniles in the juvenile and criminal justice systems. It has worked to

ensure that the particular needs of children are recognized at the initial stages of law enforcement investigation. Center attorneys took part in the MacArthur Foundation study of adolescent development as it relates to criminal justice concepts, and authored Incompetent Youth in California Juvenile Justice, published in the Stanford Law & Policy Review.