

No. 127952

**IN THE
SUPREME COURT OF ILLINOIS**

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Appellee,

v.

WAYNE WASHINGTON,

Petitioner-Appellant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-16-3024.

There on appeal from the Circuit Court of
Cook County, Illinois, No. 93 CR 14676.

The Honorable Domenica Stephenson, Judge Presiding

**BRIEF OF *AMICI CURIAE* THE INNOCENCE PROJECT AND
THE INNOCENCE NETWORK IN SUPPORT OF
PETITIONER-APPELLANT**

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INTEREST OF *AMICI CURIAE*

This brief is submitted on behalf of *amici curiae*, the Innocence Project, Inc. and the Innocence Network¹ in support of Petitioner-Appellant Wayne Washington.

The Innocence Project was established 30 years ago, in 1992, to provide pro bono representation to individuals who may be able to prove their actual innocence through the development of a post-conviction record. To date, the Innocence Project, together with affiliated organizations, has exonerated 375 people who never committed the offenses for which they had been convicted.

The Innocence Network is an association of independent organizations, including the Innocence Project, that are dedicated to providing pro bono legal and/or investigative services to imprisoned people for whom evidence discovered post-conviction can provide conclusive proof of innocence. The 68 current members of the Network represent hundreds of incarcerated people with innocence claims in 49 states, the District of Columbia, and Puerto Rico, as well as Australia, Argentina, Brazil, Canada, Ireland, Israel, Italy, the Netherlands, the United Kingdom, and Taiwan.²

¹ Counsel for a party was not involved in authoring this brief. Neither counsel nor a party made a monetary contribution intended to fund the preparation or submission of the brief. No other person made a monetary contribution for such purpose.

² The member organizations, for purposes of this brief, include the Actual Innocence Clinic at the University of Texas School of Law, After Innocence, Alaska Innocence

Amici are also dedicated to improving the accuracy and reliability of the criminal justice system. Drawing on the lessons from cases in which the system convicted innocent persons, *amici* advocate for reform designed to enhance the truth-seeking functions of the criminal justice system to prevent against future wrongful convictions. The Innocence Project and the Network participate in cases in various stages of litigation—on a consult or co-counsel basis or, as here, as *amici curiae*—where the outcome of an issue in dispute may create precedent that either significantly aggravates or significantly mitigates one or more risks of

Project, Arizona Justice Project, Boston College Innocence Program, California Innocence Project, Center on Wrongful Convictions, Committee for Public Counsel Services Innocence Program, Connecticut Innocence Project, Duke Law Center for Criminal Justice and Professional Responsibility, Exoneration Project, George C. Cochran Innocence Project at the University of Mississippi School of Law, Georgia Innocence Project, Great North Innocence Project, Hawai'i Innocence Project, Idaho Innocence Project, Illinois Innocence Project, Indiana University McKinney Wrongful Conviction Clinic, Innocence Delaware, Inc., Innocence Project, Innocence Project Argentina, Innocence Project at the University of Virginia School of Law, Innocence Project Brasil, Innocence Project London, Innocence Project New Orleans, Innocence Project of Florida, Innocence Project of Texas, Italy Innocence Project, Justicia Reinvidicada Puerto Rico Innocence Project, Korey Wise Innocence Project, Loyola Law School Project for the Innocent, Manchester Innocence Project, Michigan Innocence Clinic, Mid-Atlantic Innocence Project, Midwest Innocence Project, Montana Innocence Project, New England Innocence Project, New York Law School Post-Conviction Innocence Clinic, North Carolina Center on Actual Innocence, Northern California Innocence Project, Office of the Ohio Public Defender Wrongful Conviction Project, Ohio Innocence Project, Oklahoma Innocence Project, Oregon Innocence Project, Osgoode Hall Innocence Project, Rocky Mountain Innocence Center, Taiwan Innocence Project, Thurgood Marshall School of Law Innocence Project, University of Arizona Innocence Project, University of Baltimore Innocence Project Clinic, University of Baltimore Innocence Project Clinic, University of British Columbia Innocence Project at the Allard School of Law, University of Miami Law Innocence Clinic, Wake Forest University School of Law Innocence and Justice Clinic, Washington Innocence Project, West Virginia Innocence Project, Wisconsin Innocence Project, and Witness to Innocence.

wrongful conviction or may create precedent that impacts the rights of exonerees.

This case presents an opportunity for this Court to determine which of its innocent citizens who have been wrongfully convicted are entitled to a certificate of innocence pursuant to 735 ILCS § 5/2-702, and, therefore, which wrongfully convicted people are able to seek financial compensation for the harm they endured as a result of wrongful conviction. Here, Mr. Washington, who is indisputably innocent of the crime for which he spent 12 years wrongfully imprisoned, was denied such relief because he was deemed to have “voluntarily cause[d] or br[ou]g[ht] about his . . . conviction,” 735 ILCS § 5/2-702(g)(4), when he was coerced into signing a false confession during a lengthy, violent, manipulative interrogation and, thereafter, when he pled guilty to avoid spending his entire life unjustly imprisoned for a crime he did not commit.

For all of the reasons that follow, *amici curiae* will urge this Court to reverse the decision below and clarify that innocent people who are coerced by state actors into uttering false statements of guilt—either in an interrogation room in response to police violence or psychological manipulation, and/or in a courtroom during a guilty plea allocution to avoid an extensive period of wrongful incarceration—do not “voluntarily cause” their own conviction and are entitled to a certificate of innocence.

BACKGROUND

Section 2-702 of the Illinois Code of Civil Procedure provides victims of wrongful convictions financial compensation for the years they spent wrongfully imprisoned.³ Financial compensation for the wrongfully convicted is critical because exonerees, particularly those who have spent extended time unjustly incarcerated, “often have access to fewer resources and state support programs after release than they would if they had actually committed a crime.”⁴ Proper compensation can help those with “years missing from their resumes . . . and a criminal record that has not been expunged”⁵ re-enter society, gain employment, and create some semblance of the life of which their unjust imprisonment has robbed them.⁶

A significant portion of the exonerees who have dealt with such struggles were wrongfully convicted because police elicited a false confession from them during a coercive interrogation. Indeed, false confessions are a leading cause of wrongful convictions, contributing to nearly one quarter of all wrongful

³ 735 ILCS § 5/2-702 (2021).

⁴ Evan J. Mandery et al., *Compensation Statutes and Post-exoneration Offending*, 103 J. of Crim. Law & Criminology, 553, 578 (2013).

⁵ *Id.*

⁶ *Id.* at 576–579.

convictions later overturned by DNA evidence.⁷ As false confession experts have explained, the available data “most surely represent the tip of an iceberg” as there are various circumstances in which false confessions would not be easily discovered or tracked, including confessions disproved before trial, confessions given in juvenile proceedings that contain confidentiality provisions, or confessions given in minor crimes that do not receive post-conviction scrutiny.⁸ False confessions are particularly prevalent in Chicago, known as the nation’s

⁷ Compare DNA Exoneration Cases with a False Confession (Nationwide Since 1989), *Nat’l Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=DNA&FilterValue1=8%5FDNA&FilterField2=Contributin g%5Fx0020%5FFactors%5Fx0020&FilterValue2=False%20Confession> (134 exoneration nationwide involving DNA evidence where false confession was present) and All DNA Exoneration Cases (Nationwide Since 1989), *Nat’l Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=DNA&FilterValue1=8%5FDNA> (558 exoneration nationwide involving DNA evidence) (collectively, establishing that 134 of 558 (24%) DNA exoneration involved false confessions) (last visited June 6, 2022).

⁸ Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3 (2009).

“false confession capital.”⁹ Nearly 25% of all known false confessions nationwide were forced by Cook County police interrogations.¹⁰

Chicago Police Commander Jon Burge and Chicago police detectives under his command elicited a significant portion of such false confessions by employing interrogation tactics that were “unquestionably horrific”¹¹ and included electric shocks, beatings, cigarette burnings, suffocation, kicking, screaming, and threats with assault weapons.¹² In February 1993, after nearly two decades of torturing confessions from innocent people, Burge was fired, but

⁹ See 60 Minutes: *Chicago: The False Confession Capital* (CBS 2012), available at https://www.youtube.com/watch?v=YSo_9Xo_78E (discussing the high prevalence of false confessions in Chicago); see also Klara Stephens, *Misconduct and Bad Practices in False Confessions: Interrogations in the Context of Exonerations*, 11 Ne. U.L. Rev. 593, 598 (2019) (“Peter Neufeld famously said, ‘[q]uite simply, what Cooperstown is to [b]aseball, Chicago is to false confessions. It is the Hall of Fame.’”) (citations omitted). See also Janet Moore, *Reviving Escobedo*, 50 Loy. U. Chi. L.J. 1015, 1029–30 (2019) (“By early 2019, Illinois had the second highest number of exonerations (296) among the fifty states, following only Texas. Nearly 80 percent (235) of the Illinois exoneration cases were from Cook County. Thus, more wrongful convictions have been detected and corrected in this single county as in the entire state of California. In 2017 alone, Cook County was responsible for almost half of the nation’s 29 exonerations attributed to false confessions.”).

¹⁰ Stephens, *Misconduct and Bad Practices in False Confessions: Interrogations in the Context of Exonerations*, *supra* note 9, at 598. (“Indeed, Cook County, which includes Chicago, has far and away more exonerations based on false confessions than any other county in the country. A quarter of all exonerations with false confessions come from Chicago. Moreover, within Chicago, false confessions occur in a much higher proportion as compared to all exonerations elsewhere.”).

¹¹ *United States v. Burge*, 711 F.3d 803, 808, 812 (7th Cir. 2013). See also *Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring) (noting that a “mountain of evidence indicates that torture was an ordinary occurrence” in the Chicago Police Department under Burge’s command and comparing interrogation tactics to the Abu Ghraib facility in Iraq).

¹² See generally G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. Rev. 329 (2014) (“Flint Taylor”); see also *People v. Wilson*, 116 Ill. 2d 29, 35–41 (1987).

his regime of violent, coercive interrogation practices persisted in the Chicago Police Department for decades.¹³ Appellant, Wayne Washington, was one of over 100 known torture victims under Commander Burge’s regime.

The State does not dispute that Wayne Washington is factually innocent. Nor does the State dispute that Mr. Washington gave a coerced, false confession to detectives who were using illegal methods—including physically beating Mr. Washington—to compel him to “confess” to a crime he did not commit.¹⁴ Mr. Washington was undoubtedly wrongfully convicted and unjustly imprisoned for 12 years, yet as discussed below, was denied a certificate of innocence.

The events that led to Mr. Washington’s wrongful conviction began on May 20, 1993, shortly after Commander Burge had been fired from the Chicago Police Department,¹⁵ when police arrested and interrogated Tyrone Hood for the murder of Marshall Morgan Jr.¹⁶ During his interrogation, Mr. Hood denied

¹³ See, e.g., Andy Thayer, *High-Ranking Torture Cop Proteges Sued in Sign that Chicago is Not Over the Burge Era*, Loevy & Loevy (Feb. 8, 2018), <https://loevy.com/blog/high-ranking-torture-cop-proteges-sued-sign-chicago-not-burge-era>.

¹⁴ *People v. Washington*, 2020 IL App (1st) 163024, ¶¶ 10, 18 *reh’g denied* (Nov. 12, 2021), *appeal allowed*, No. 127952, 2022 WL 1013820 (Ill. Mar. 30, 2022).

¹⁵ *Jon Burge and Chicago’s Legacy of Police Torture*, Chicago Tribune (Sept. 19, 2018), <https://www.chicagotribune.com/news/ct-jon-burge-chicago-police-torture-timeline-20180919-htmlstory.html>.

¹⁶ R. U36–38. Citations to the record are as follows: (1) citations to the Reports of Proceedings in Mr. Washington’s and Mr. Hood’s consolidated case, No. 16-2964 (Cir. Ct. of Cook Cnty.), are denoted as “R.” (Subsequent letters and numbers following these record citations denote page numbers. For example, R. U22, is the Report of Proceedings in Case No. 16.2964, page U22); (2) citations to the Common Law Volumes which were filed under Mr. Washington’s and Mr. Hood’s consolidated case, No. 16-2964 (Cir. Ct. of Cook Cnty.),

killing Mr. Morgan, and, as part of his alibi, told police he was with Mr. Washington on the relevant day.¹⁷ Mr. Hood was released, but five days later, police arrested Mr. Hood again for the murder of Mr. Morgan at a convenience store on the South Side of Chicago; they also arrested Mr. Washington in connection with the murder.¹⁸

Mr. Washington was taken to a police station where he was handcuffed to a chair and left alone for hours.¹⁹ Eventually, Detectives John Halloran and Kenneth Boudreau—both of whom have been implicated in several violent interrogations that elicited false confessions from innocent men²⁰—proceeded to beat Mr. Washington, repeatedly kicked his chair over, and demanded he

are denoted as “C”; (3) citations to the Supplemental Record filed in Mr. Washington’s case, No. 97-0342 (Cir. Ct. of Cook Cnty.), are denoted as “Sup. C.”

¹⁷ Sup. C. 83. Police isolated and confined Mr. Hood for hours. R. U37. When the police interrogated him about the murder, Mr. Hood repeatedly denied knowing anything about it. R. U38. During the interrogation, the police “physically abused and verbally abused, kicked, choked, punched,” Mr. Hood. *Id.* After two days, police released Mr. Hood. R. U39.

¹⁸ R. U50–52.

¹⁹ R. U54–55.

²⁰ See Maurice Possley et al., *Veteran Detective’s Murder Cases Unravel*, Chicago Tribune (Dec. 17, 2001), <https://www.chicagotribune.com/investigations/chi-011217confession-story.html> (A Chicago Tribune investigation of “thousands of murder cases filed in Cook County from 1991 through 2000 found that Boudreau . . . had been involved in a wide range of cases that ultimately collapsed even though police obtained a confession. . . . Boudreau has been accused of punching, slapping or kicking” suspects, taking advantage of suspects’ developmental disabilities or low IQs, and ultimately eliciting coerced false confessions.). See also Aislinn Pulley, *Chicago Paves the Way for Reparations for Police Sadism*, ACLU, <https://www.aclu.org/issues/chicago-paves-way-reparations-police-sadism> (“Jon Burge is a notorious household name in Chicago. But the detectives who Burge trained to inflict torture—like Boudreau[] [and] Halloran. . . .—are not.” Halloran was implicated in torturing a false confession out of Sean Tyler, as well as others.).

confess to committing the homicide of Marshall Morgan, Jr. with Mr. Hood.²¹ Throughout the two days of violent interrogation, Mr. Washington maintained his innocence.²² On the second day, detectives prepared a statement for Mr. Washington to sign, implicating himself and Mr. Hood in the homicide, promising him he could go home once he signed the confession.²³ Unable to endure the physical and psychological abuse any longer and desperately wanting to go home to get away from the detectives who had beaten him, Mr. Washington signed the false statement drafted by police.²⁴ With the confession in hand, police charged Mr. Hood and Mr. Washington with first-degree murder.²⁵

Mr. Washington and Mr. Hood were tried separately.²⁶ Mr. Washington, who was tried first, pled not guilty and proceeded to a jury trial.²⁷ The only evidence presented by the government was two sets of statements that were violently coerced by Chicago police officers. First, Mr. Washington's false confession, indicating that he planned a robbery with Mr. Hood and that they received a gun from a man named Jody Rogers.²⁸ Second, the statements of

²¹ See R. U56, C. 920–21.

²² R. U56. C. 920–21.

²³ R. U59.

²⁴ C. 257. See also C. 920.

²⁵ R. U58, C. 920.

²⁶ R. U65, C. 930.

²⁷ R. U64-65, C. 921.

²⁸ C. 832.

brothers Michael and Jody Rogers, who testified that: (1) they heard Mr. Hood say he was going to commit a robbery, (2) they provided Mr. Hood with a gun the day of the murder, and (3) Mr. Hood thereafter told them he murdered Mr. Morgan.²⁹ Michael and Jody Rogers later recanted their statements and explained that they were physically abused by police and threatened until they provided statements incriminating Mr. Washington and Mr. Hood.³⁰

At Mr. Washington's trial, the jury was unable to reach a verdict, and the court declared a mistrial.³¹ The government next tried Mr. Hood's case. Mr. Hood waived a jury and had a bench trial.³² The judge convicted him and sentenced him to 75 years in prison.³³

After Mr. Hood's conviction and sentencing, the prosecution moved to retry Mr. Washington. Before trial commenced, the prosecution offered Mr. Washington a plea deal that would result in a 25 year sentence—50 years less than Mr. Hood, who maintained his innocence, received.³⁴ After weighing his best chance for a future, Mr. Washington, an indisputably innocent man, felt

²⁹ C. 945–50, 960–62.

³⁰ C. 930, 939–41, 960–62.

³¹ R. U65.

³² C. 598.

³³ *Id.*

³⁴ C. 921.

compelled to plead guilty.³⁵ Years later, Mr. Washington, in his own words, explained that he could not imagine spending 75 years in prison for a crime he did not commit, “so when the deal for the 25 years was offered to me, I calculated . . . I would be 32 years old when I came home. I still had a chance at life. So I weighed out my options, and I felt like that 25 years was the lesser of the two evils.”³⁶

Throughout his incarceration, Mr. Washington steadfastly maintained his innocence, filing multiple petitions for post-conviction relief that asserted his innocence.³⁷ The courts denied each petition.³⁸ Mr. Hood also filed multiple petitions for post-conviction relief, one of which resulted in the governor granting his petition for clemency and commuting his sentence.³⁹ Thereafter, when additional evidence was uncovered establishing the true perpetrator of the murder, the State moved to vacate Mr. Washington’s and Mr. Hood’s convictions and grant them new trials.⁴⁰ The court granted the motion,⁴¹ and the State then dismissed the charges against them.⁴²

³⁵ *Id.*

³⁶ R. U65.

³⁷ *Washington*, 2020 IL App (1st) 163024, ¶ 4.

³⁸ *Id.*

³⁹ *Id.* ¶ 5; *see also* C. 811.

⁴⁰ *Id.* ¶ 6.

⁴¹ *Id.*

⁴² *Id.*

One week later, Mr. Washington and Mr. Hood filed petitions for certificates of innocence without any opposition from the State.⁴³ In support of their petitions, they submitted evidence that, among other things, the two key witnesses had recanted their testimony,⁴⁴ and Marshall Morgan, Sr., the victim's father and the true perpetrator, killed his son to collect on a life insurance policy.⁴⁵

Reviewing the petitions of innocent men wrongfully convicted of the exact same crime, the circuit court granted Mr. Hood's petition⁴⁶ but denied Mr. Washington's, concluding that Mr. Washington had voluntarily brought about his own conviction by giving a false confession and pleading guilty, and thus, was not entitled to a certificate pursuant to Section 2-702(g)(4).⁴⁷ Mr. Washington appealed, and again, the State did not oppose his appeal.⁴⁸ Nevertheless, the appellate court affirmed the circuit court's denial of his petition and, largely, adopted its reasoning, holding that "[b]ecause Mr. Washington failed to meet the fourth prong of section 2-702(g), [requiring proof that the petitioner did not

⁴³ *Id.* ¶¶ 7–10.

⁴⁴ C. 930, 939–41, 960–62.

⁴⁵ C. 870–73, 882–84.

⁴⁶ *People v. Hood*, 2021 IL App (1st) 162964, ¶ 43.

⁴⁷ *Washington*, 2020 IL App (1st) 163024, ¶¶ 10, 23. The circuit court denied the petition. Mr. Washington moved for reconsideration, the circuit court struck its order, allowed Mr. Washington to present evidence, and again denied his petition. *Id.* ¶¶ 10, 16. *See also* 735 ILCS § 5/2-702(g)(4) (2021).

⁴⁸ *Washington*, 2020 IL App (1st) 163024, ¶ 18.

cause his own conviction,] we find that the trial court did not err in denying his petition for a certificate of innocence.”⁴⁹

For all of the reasons discussed below, *amici* urge this Court to hold that neither a police-coerced false confession nor a guilty plea entered to avoid a more severe punishment that would ensue after a wrongful jury verdict should prohibit an innocent person from obtaining a certificate of innocence. To hold otherwise would be to arbitrarily prevent innocent individuals who were coerced or compelled by state actors into uttering false statements of guilt—in an interrogation room or on the record during a plea allocution—from obtaining monetary relief to compensate them for the years they spent unjustly and wrongfully incarcerated.

ARGUMENT

I. False confessions elicited by police coercion must not preclude issuance of a certificate of innocence under 735 ILCS § 5/2-702(g)(4) because such confessions are never truly voluntary.

A. There are three types of false confessions; only one should preclude relief under 735 ILCS § 5/2-702(g)(4).

A false confession is an admission to a criminal act—usually accompanied by a narrative of how and why the crime occurred—that the confessor did not commit.⁵⁰ False confessions are a leading cause of wrongful convictions in the

⁴⁹ *Id.* ¶ 29.

⁵⁰ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 5.

United States, contributing to nearly 24% of the convictions underlying all known DNA exonerations.⁵¹

Experts studying the phenomenon of false confessions have enumerated three types of false confessions: coerced-compliant, coerced-internalized, and voluntary.⁵² As discussed further below, only a “voluntary” false confession— as defined by social scientists studying false confessions and distinct from the legal definition of a constitutionally “voluntary” statement⁵³—should preclude an innocent person from obtaining a certificate of innocence under 735 ILCS § 5/2-702(g)(4).

1. *Coerced-Compliant False Confessions*

Coerced-compliant false confessions occur when police interrogate an innocent suspect and, using psychological or physical manipulation, compel him

⁵¹ See *All DNA Exoneration Cases (Nationwide Since 1989)*, *The Nat'l Registry of Exonerations* (last visited June 6, 2022), <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=DNA&FilterValue1=8%5FDNA>.

⁵² Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 14.

⁵³ “Admitting an involuntary confession into evidence violates the fifth amendment of the United States Constitution (U.S. Const., amend. V) and article I, section 10, of the Illinois Constitution of 1970.” *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005), as modified on denial of reh’g (Jan. 23, 2006). A constitutionally voluntary confession has been defined as a statement made without the defendant’s will being “overborne.” *People v. Ballard*, 206 Ill. 2d 151, 177 (2002); see also *Schneekloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (describing the voluntariness inquiry as whether a person’s “will has been overborne and his capacity for self-determination critically impaired”).

to confess to a crime he did not commit.⁵⁴ In these cases, “the suspect acquiesces to the demand for a confession to escape a stressful situation, avoid punishment, or gain a promised or implied reward.”⁵⁵ The suspect knows he is innocent but gives in to the interrogative pressure and comes to “believe that the short-term benefits of confessing, relative to maintaining his innocence, outweigh the long-term costs.”⁵⁶

While most modern coerced-compliant false confessions are obtained by psychological manipulation, utilized within the “inherently compelling pressures”⁵⁷ of police interrogation, police violence or threats of violence have, historically, been responsible for many coerced-compliant false confessions. Indeed, two-thirds of all known cases nationwide in which police misconduct led to false confessions involved threatened or actual violence during the relevant interrogations.⁵⁸ Police violence, like that suffered by Mr. Washington, has

⁵⁴ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, 14.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). *See also Corley v. United States*, 556 U.S. 303, 321 (2009) (“‘Custodial police interrogation, by its very nature, isolates and pressures the individual,’ and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed.”) (internal citations and alterations omitted).

⁵⁸ Samuel Gross et al., *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, Nat’l Registry of Exonerations (2020), https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf.

caused an alarming number of wrongful convictions of innocent Illinois citizens. In Chicago alone, violence or threats of violence were present in 68% of known false confessions.⁵⁹

Coerced-compliant false confessions that result from solely psychological coercion often involved the use of the “Reid Technique.”⁶⁰ Developed in the 1940s and named after one of its founders, Chicago Police Detective John Reid, the Reid Technique is the most influential and widely used interrogation method in the nation,⁶¹ and its methodology has been linked to many coerced-compliant false confessions.⁶² The Reid Technique instructs investigators to isolate the

⁵⁹ See Stephens, *Misconduct and Bad Practices in False Confessions: Interrogations in the Context of Exonerations*, *supra* note 9, at 604.

⁶⁰ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 7, 12.

⁶¹ Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 *Fordham Urb. L.J.* 791, 808 (2006). The Reid Technique is characterized by physical isolation and psychologically manipulative techniques intended to “lead suspects to see confession as an expedient means of escape.” Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 14. Today, the Reid Technique—in which psychological manipulation is key—is deemed sufficiently controversial due to its outsized role in producing false confessions that “a consulting group that . . . has worked with a majority of U.S. police departments[] said[,] . . . it will stop training detectives in the [Reid] method” and will now “use the Reid technique only to educate police on the risk and reality of false confessions.” Eli Hager, *The Seismic Change in Police Interrogations*, The Marshall Project (Mar. 7, 2017), <https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations>.

⁶² Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 4–15; see also Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, *supra* note 61, at 827–31 (reviewing data showing coercive interrogation techniques induce false confessions in actual convictions and laboratory experiments). It also increases the rate of false confessions. Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 17 *Current Directions in Psychol. Sci.* 249, 250–51 (2008). Even the U.S. Supreme Court has noted that methods proposed and taught by the

suspect in a small private room to increase the suspect's anxiety and incentive to escape.⁶³ Once isolated and confined, officers engage in a nine-step process employing tactics that “have been repeatedly present in known cases of false confessions that have led to wrongful convictions.”⁶⁴

One such tactic, known as “maximization,” is designed to “convey the interrogator’s rock-solid belief that the suspect is guilty and that all denials will fail.”⁶⁵ Maximization includes such tactics as “making an accusation, overriding objections, and citing evidence[,] either real or manufactured” to coerce the suspect to confess.⁶⁶ Often used in conjunction with maximization, “minimization” is “designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question.”⁶⁷ Using this approach, the interrogator offers “sympathy and understanding,” and often provides “a choice of alternative explanations—for example, suggesting to the suspect that the murder was spontaneous, provoked, peer-pressured, or

creators of the Reid Technique may even elicit a false confession. *Miranda*, 384 U.S. at 449 nn.9, 24.

⁶³ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 6–7.

⁶⁴ Jeffrey Kaplan et al., *Perceptions of Coercion in Interrogation: Comparing Expert and Lay Opinions*, *Psych. Crime & Law* 1,4 (2019).

⁶⁵ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 12.

⁶⁶ *Id.*

⁶⁷ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 12.

accidental.”⁶⁸ Research has shown that this “tactic communicates by implication that leniency in punishment is forthcoming upon confession,” and often leads “innocent people who feel trapped to confess.”⁶⁹

2. *Coerced-Internalized False Confessions*

Coerced-internalized confessions occur when police psychologically coerce a suspect and persuade him to “truly believe in [his] guilt despite objective evidence to the contrary.”⁷⁰ Distinct from coerced-compliant confessions, where the suspect “does not believe the suggestions of interrogators” but confesses to escape intolerable physical and/or psychological interrogative techniques, a person who gives a coerced-internalized confession actually begins to believe his interrogators.⁷¹ Through “highly suggestive questioning and proffered explanations for the suspect’s alleged lack of memory,”⁷² and without a clear recollection of *not* committing the crime, the suspect may internalize the interrogation and “change [his] belief about [his] innocence and actively accept the interrogators’ accounts of events.”⁷³ These types of false confessions are

⁶⁸ *Id.*

⁶⁹ *Id.* at 18.

⁷⁰ Frances E. Chapman, *Coerced Internalized False Confessions and Police Interrogations: The Power of Coercion*, 37 *Law & Psychol. Rev.* 159, 161 (2013).

⁷¹ *Id.* at 169.

⁷² Chapman, *Coerced Internalized False Confessions and Police Interrogations: The Power of Coercion*, *supra* note 70, at 179 (quoting Christopher Sherrin, *False Confessions and Admissions in Canadian Law*, 30 *Queen’s L.J.* 601, 621 (2005)).

⁷³ *Id.* at 170.

more likely to occur when the suspect is vulnerable—for example, the suspect is young or living with cognitive deficits—and the interrogators lie or present the suspect with false evidence.⁷⁴

3. *Voluntary False Confession*

A “voluntary” false confession occurs when an innocent person confesses to a crime he did not commit without prompting, coercion, or other pressure from law enforcement.⁷⁵ As discussed further below, there are many reasons why a person may voluntarily confess, including to gain notoriety for a high-profile crime.⁷⁶ The most prevalent reason for a voluntary false confession is the desire to protect the actual perpetrator.⁷⁷

B. When a false confession—either coerced-compliant or coerced-internalized—is elicited by police, it is not a voluntary act.

In every police-coerced false confession—whether the coercion involves actual or threatened violence or psychological manipulation—the interrogator extracts a confession from a reluctant suspect that the interrogator presumes is guilty. It is necessarily the interrogator’s coercion, and not the suspect’s

⁷⁴ Saul M. Kassir, *Internalized False Confessions*, in 1 *The Handbook of Eyewitness Psychology: Memory for Events* 169, 175 (Michael P. Toglia, et al. eds. 2007).

⁷⁵ Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 14.

⁷⁶ *Id.*

⁷⁷ *Id.*

deliberate actions, that is the direct cause of the false confession. A confession under these circumstances is not the type of act commonly understood as an act done voluntarily. The Oxford English dictionary defines voluntarily as “[o]f one’s own free will or accord; without compulsion, constraint, or undue influence by others; freely, willingly.”⁷⁸ False confessions elicited by physical or psychological coercion are achieved by compulsion or undue influence from interrogators, and thus, cannot properly be characterized as “voluntary” under the plain meaning of the word.

Mr. Washington’s false confession is a prototypical example of an involuntary, coerced-compliant false confession. Mr. Washington endured two days of abuse at the hands of Chicago detectives.⁷⁹ Detectives handcuffed Mr. Washington to a chair while they interrogated him, beat him, and repeatedly kicked over his chair—with him in it—until he signed a confession.⁸⁰

In addition to violence, the detectives who elicited Mr. Washington’s false confession used tactics consistent with the psychologically coercive Reid Technique discussed above. For example, the Detectives engaged in “maximization” techniques when they repeatedly rejected Mr. Washington’s honest assertions of innocence and continued to accuse him of murder, falsely

⁷⁸ “voluntarily, adv.,” OED Online (Oxford Univ. Press 2022).

⁷⁹ C. 920–21.

⁸⁰ R. U54–56; R. U58-59.

telling him that they had people linking him to the crime and that he could not leave until he confessed.⁸¹ Eventually, worn down from two days of violent manipulation, Mr. Washington agreed to sign the “confession” that officers prepared, believing that he could go home once he signed it.⁸²

Had it not been for the officers’ violence and psychological coercion, Mr. Washington would have never “confessed” to the murder. To call Mr. Washington’s action in signing the “confession” a “voluntary . . . cause” of his own conviction, and thereby, deny him a certificate of innocence pursuant to 735 ILCS § 5/2-702(g)(4), is to ignore the reality of what occurred in the interrogation room.

C. A false confession given without external pressure from police is a voluntary act and may, in some circumstances, properly prevent an innocent person from obtaining a certificate of innocence.

Despite the prevalence of physically and psychologically coerced false confessions, some false confessions are not induced by these improper tactics. As previously defined, voluntary false confessions are those in which an innocent person willingly volunteers false statements to confess to a crime he knows he did not commit.⁸³ People who intentionally and willingly confess to crimes they

⁸¹ R. U55–56; R. U58. *See also* R. U63.

⁸² R. U58.

⁸³ *See generally* Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 Psych. Sci. Pub. Int. 33, 49 (2004).

did not commit usually do so for self-interested or dishonest reasons.⁸⁴ These can include a need for attention or notoriety, the perception of tangible gain, wanting to mislead the police to exact revenge for a prior offensive interaction, or the desire to protect the actual criminal or someone else.⁸⁵ In one high-profile example, when Charles Lindbergh's infant was kidnapped, approximately 200 people—all of whom were innocent—voluntarily stepped forward to confess.⁸⁶ Unlike coerced-compliant or coerced-internalized false confessions, voluntary false confessions are the product of a person's deliberate intention to confess to a crime he knows he did not commit and, generally, is made with the intent to mislead law enforcement.

Because voluntary false confessions are generally the result of deliberate acts; are made by the “confessor” to mislead authorities; and are not the product of physical or psychological coercion by state actors, these types of confessions may prohibit relief under Section 2-702(g)(4). Conversely, coerced-compliant and coerced-internalized false confessions must not preclude an innocent person from obtaining a certificate of innocence, as these false confessions are not

⁸⁴ Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra* note 8, at 15.

⁸⁵ Kassin & Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, *supra* note 83, at 49.

⁸⁶ Kassin & Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, *supra* note 83, at 49.

intended to mislead law enforcement or the State. As Presiding Justice Walker (dissenting from the appellate court’s ruling denying Mr. Washington’s certificate of innocence) aptly stated, “[a] false confession . . . should foreclose relief *only* when the person falsely accused *culpably misled* police or other officials.”⁸⁷

II. Guilty pleas must not categorically preclude a certificate of innocence for the innocent.

According to the National Registry of Exonerations, wrongful convictions by guilty plea account for nearly one-quarter of all wrongful convictions nationwide⁸⁸ and nearly half of wrongful convictions in Illinois.⁸⁹ The prevalence of wrongful guilty pleas can be understood, as explored below, as a function of the “trial penalty”—the imposition of a significantly longer sentence upon conviction by a factfinder, as compared to the sentence the court would

⁸⁷ *Washington*, 2020 IL App (1st) 163024, ¶ 48 (emphasis added).

⁸⁸ Compare Guilty Plea Cases (Nationwide Since 1989), *Nat’l Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDD-B-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Group&FilterValue1=P> (767 exonerations nationwide where defendant pled guilty) and All Cases (Nationwide Since 1989), *National Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (3139 exonerations nationwide) (last visited May 30, 2022).

⁸⁹ Compare Guilty Plea Cases (Illinois State Court Only, Since 1989), *Nat’l Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDD-B-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=IL&FilterField2=Group&FilterValue2=P> (248 exonerations in Illinois state court cases where defendant pled guilty) and Illinois State Court Cases (Since 1989), *National Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDD-B-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=IL> (504 exonerations in Illinois state court).

have imposed if the defendant pled guilty. And due to the biasing impact of confession evidence on all parties to a case, the threat of the trial penalty may be even more compelling when, like here, the innocent person has provided a false confession. Accordingly, and for all of the reasons that follow, *amici* urge this Court to hold that innocent people who, when faced with the threat of a lengthy, unjust imprisonment that could be imposed after a factfinder renders a wrongful verdict, pled guilty to mitigate the harms of their wrongful accusation are not categorically precluded from the issuance of a certificate of innocence.

A. Wrongful convictions regularly occur by guilty plea when the State incentivizes an innocent person to plead guilty to avoid the risk of a more severe sentence after trial.

As this Court has recognized, the guilty plea system is “not structured to ‘weed out the innocent’ or guarantee the factual validity of the conviction[;]”⁹⁰ thus, a guilty plea “may be based on factors that have nothing to do with [the] defendant’s guilt.”⁹¹ Accordingly, it is undisputed that factually innocent people sometimes plead guilty.⁹²

⁹⁰ *People v. Reed*, 2020 IL 124940, ¶ 33. *See also Missouri v. Frye*, 566 U.S. 134, 144 (2012) (stating that plea bargaining is merely “horse trading” between the government and the defendant to determine how long a defendant goes to jail).

⁹¹ *Reed*, 2020 IL 124940 ¶¶ 31, 33.

⁹² *Id.* ¶ 33 (finding “[e]mpirical data related to exonerations further prove that innocent people plead guilty”).

The regular occurrence of innocent people pleading guilty is a direct result of the compelling incentive for a defendant to avoid the “trial penalty.”⁹³ The “trial penalty” refers to the imposition of a significantly more severe sentence upon losing a trial, compared to what was offered in plea negotiations.⁹⁴ When there is a meaningful discrepancy between the sentence the prosecutor offers in exchange for a guilty plea and the sentence that would likely be imposed after a trial, the threat of the “trial penalty” may compel people, including the innocent, to accept a plea deal.⁹⁵ When the plea terms significantly reduce the possible sentence, “it is rational to refuse to roll the die, regardless of whether one believes the evidence establishes guilt beyond a reasonable doubt, and regardless of whether one is factually innocent.”⁹⁶ This rationale is particularly prevalent among innocent defendants who must weigh the odds of evading a wrongful jury verdict while unjustly imprisoned in pre-trial detention.⁹⁷

⁹³ Norman L. Reimer & Martín Antonio Sabelli, *The Tyranny of the Trial Penalty: The Consensus that Coercive Plea Practices Must End*, 31 Fed. Sent’g Rep. 215, 215 (2019).

⁹⁴ *Id.*

⁹⁵ Reimer & Sabelli, *The Tyranny of the Trial Penalty: The Consensus that Coercive Plea Practices Must End*, *supra* note 93, at 215.

⁹⁶ *People v. Shaw*, 2019 IL App. (1st) 152994, ¶ 42. *See also Reed*, 2020 IL 124940, ¶¶ 31, 33 (recognizing defendants may choose to plead guilty to avoid a more severe sentence at trial).

⁹⁷ Ram Subramanian et al., *In the Shadows: a Review of the Research on Plea Bargaining*, Vera Institute of Justice 1, 11 (2020), <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf>.

The consequences of the trial penalty bear out in practice: the average sentence for murder after a factfinder convicts the accused at trial is 30.7 years, as compared to the average plea sentence of 17.5 years for the same crime.⁹⁸ In Illinois circuit courts, less than 4.5% of criminal felony cases go to trial.⁹⁹ The majority of criminal felony cases in these courts result in a guilty plea.¹⁰⁰ Further, under the Illinois Truth in Sentencing Law, people convicted of first degree murder must serve 100% of their sentence.¹⁰¹ Accordingly, innocent people in a situation like Mr. Washington's, who are wrongfully accused of first-degree murder, are even more likely to enter a plea to a lesser offense, if offered, to avoid serving 100% of a substantially longer sentence.

Further, in capital matters, the trial penalty may incentivize innocent people to plead guilty to avoid the death penalty.¹⁰² Although Illinois abolished the death penalty in 2011, the effects of the legacy of the death penalty on

⁹⁸ National Association of Criminal Defense Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* 1, 21 (2018).

⁹⁹ Illinois Courts, *Annual Report of the Illinois Courts: 2020 Statistical Summary*, 83 (2021), <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/de4253a6-147f-4643-a201-0e29ce403179/2020%20Annual%20Report%20Statistical%20Summary.pdf>.

¹⁰⁰ *Id.*

¹⁰¹ See 730 ILCS § 5/3-6-3(a)(2)(i) (2022).

¹⁰² Susan Ehrhard, *Plea Bargaining and the Death Penalty: An Exploratory Study*, 29 *The Just. Sys. J.* 313 (2008); see also Richard A. Leo & Richard J. Ofshe, *Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 *J. Crim. L. & Criminology* 429, 478–81 (1998) (“If it seems counter-intuitive that an innocent person would confess falsely, the specter of an innocent false confessor pleading guilty seems fantastic. Yet this is not uncommon.”) (describing cases where an innocent person pled guilty to avoid the death penalty or a harsher sentence).

innocent people convicted in Illinois remains. Shawn Whirl's case is instructive. In 1991, detectives under the infamous Jon Burge's command tortured and beat Mr. Whirl, a Chicago resident, until he falsely confessed to the murder of a taxicab driver, repeating the statements detectives coerced him to recite.¹⁰³ The prosecutor informed Mr. Whirl that he would seek the death penalty if Mr. Whirl went to trial and was convicted.¹⁰⁴ To save his own life,¹⁰⁵ Mr. Whirl agreed to plead guilty to first-degree murder and was sentenced to 60 years in prison.¹⁰⁶ Twenty-four years later (and five years after Illinois abolished the death penalty), Mr. Whirl was exonerated.¹⁰⁷

Like Mr. Whirl, Mr. Washington, confronted with the risk of losing a retrial and facing potential imprisonment of 75 years, agreed to plead guilty, despite his innocence.¹⁰⁸ Mr. Washington, years after his wrongful guilty plea, acknowledged that Mr. Hood's loss at trial heavily influenced his decision to plead guilty: "I had just went through a hung jury, and to be perfectly honest, sir,

¹⁰³ Maurice Possley, *The Nat'l Registry of Exonerations: Shawn Whirl* (2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4770>.

¹⁰⁴ *Id.*

¹⁰⁵ After the court imposed the sentence, Mr. Whirl told the court he did not commit the crime but pled guilty to avoid the death penalty. *Id.* The court cut off Mr. Whirl, withdrew his guilty plea, and took a recess. *Id.* After recess, Mr. Whirl asked that the court reinstate his guilty plea and gave a different reason for why he said he did not commit the crime. *Id.* The court again sentenced Mr. Whirl to a 60-year term. *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ C. 920–21.

waiting on my jury to deliberate, I physically got sick. I couldn't put myself through it no more, and I couldn't imagine spending 75 years in the penitentiary for a crime I didn't do. So when the deal for 25 years was offered to me, I calculated . . . I would be 32 years old when I came home. I still had a chance at a life. So I weighed out my options, and I felt like 25 years was the lesser of two evils.”¹⁰⁹ Compelled by his circumstances, which were brought about by state actors, Washington did what many innocent victims of wrongful accusation and police misconduct do—pled guilty to a crime he did not commit.

B. Innocent people who falsely confess are even further incentivized to plead guilty to avoid the prejudicial effect of false confessions at a trial.

Social scientists studying the influence of confession evidence on jurors have determined that “confessions have more impact on verdicts than do other potent forms of evidence.”¹¹⁰ This is true even when jurors know that the confession is coerced by police misconduct.¹¹¹ A confession is so influential on factfinders that when presented with a confession, jurors often ignore exculpatory evidence that should exonerate the defendant.¹¹² Indeed, 22% of

¹⁰⁹ R. U65.

¹¹⁰ Saul M. Kassin, *Why Confessions Trump Innocence*, 67 Am. Psychol. Ass'n 431, 433–34 (2012).

¹¹¹ *Id.* at 433.

¹¹² See *DNA Exonerations in the United States*, The Innocence Project, <https://innocenceproject.org/dna-exonerations-in-the-united-states> (August 29, 2021) (“DNA Exonerations”).

innocent people who falsely confessed and were later exonerated by DNA testing had exculpatory DNA evidence presented at trial but were still wrongfully convicted.¹¹³ Consistent with this statistic, researchers have found that “people do not adequately discount confessions—even when they are retracted and judged to be the result of coercion.”¹¹⁴

Judges as factfinders are not immune from the biasing impact of false confession evidence. Trial judges, like jurors, also routinely fail to disregard even unreliable and potentially false confessions elicited by police coercion.¹¹⁵ Strikingly, social scientists studying the impact of confession evidence on judges have demonstrated that when direct evidence of guilt against the accused was weak, judges are still significantly more likely to convict when a confession elicited by police coercion was presented to them.¹¹⁶

Not only can false confessions bias the perceptions of the judge and jury from independently analyzing the evidence of guilt, but they can even taint the perceptions of investigators, eyewitnesses, forensic experts, and others entrusted

¹¹³ *Id.*

¹¹⁴ Kassir, *Why Confessions Trump Innocence*, *supra* note 110, at 433.

¹¹⁵ *Id.* at 434.

¹¹⁶ *Id.* (summarizing the results of a study in which 132 judges were presented with evidence of a murder case where there was either strong or weak evidence against the defendant, finding that when direct evidence of guilt was strong, judges rendered a guilty verdict in 100% of the cases where a confession elicited by police coercion was present, compared to only 83% of cases when no confession was present. When direct evidence of guilt was weak, 69% of judges convicted the defendant with the high-pressure produced confession, compared to only 17% when no confession was present.).

to investigate and provide independent evidence to a judge and jury.¹¹⁷ Typically, following a confession, police “close the investigation, deem the case solved, and overlook exculpatory information—even if the confession is internally inconsistent, contradicted by external evidence, or the product of coercive interrogation.”¹¹⁸ Moreover, research establishes that confessions can influence the interpretation and presentation of expert and lay witness evidence.¹¹⁹ In one study of false confession cases, researchers identified that in 78% of the cases, the false confessions were accompanied by improper forensic science (63%), by mistaken eyewitness identifications (29%), and by untruthful witnesses (19%). In 65% of false confession cases that contained multiple errors, the police obtained the confession before conducting the rest of their investigation, supporting the conclusion that once a false confession is procured, evidence that is subject to confirmation bias may wrongfully corroborate the confession.¹²⁰ The prejudicial effect of a false confession elicited by police coercion on a trial is thus far reaching, and as a result, once a false confession is uttered (or signed)

¹¹⁷ *Id.* at 436.

¹¹⁸ Kassin, *Why Confessions Trump Innocence*, *supra* note 110, at 433.

¹¹⁹ *Id.* at 435.

¹²⁰ *Id.* at 436–37.

in an interrogation room, the risk of wrongful conviction, even when the evidence against the innocent confessor is weak, is distressingly high.¹²¹

Significantly, defense attorneys and prosecuting attorneys are also affected by confession evidence. For example, defense attorneys may feel compelled to encourage their clients who maintain their innocence to plead guilty if a false confession elicited by police coercion will be admitted at trial because of the impact the confession evidence will have on the factfinder at trial.¹²² And, when faced with a defendant's claim of a false confession elicited by police coercion, some prosecutors "redouble efforts to procure other forms of incriminating proof, even if questionable in credibility."¹²³

In sum, false confessions bias the entire adversarial process, from the police investigation to the trial, and present a high risk of wrongful conviction if the innocent "confessor" chooses to go to trial. An innocent "confessor's" choice to plead guilty, caused by the tragic reality they find themselves in, cannot fairly be deemed to be a voluntary, deliberate choice to "cause" their conviction.

¹²¹ These biases have grave consequences. For example, in the case of Barry Laughman, the defendant confessed to rape and murder during an unrecorded interrogation. The next day, serology tests showed that Laughman had Type B blood; yet the DNA evidence reflected someone with Type A blood. Aware that Laughman had confessed, the state forensic chemist proposed four "novel" theories, none grounded in science, to explain away the mismatch. A jury wrongfully convicted Laughman, and he was imprisoned for 16 years before he was exonerated. *Barry Laughman, Time Served: 16 Years*, The Innocence Project, <https://innocenceproject.org/cases/barry-laughman/>.

¹²² Kassir, *Why Confessions Trump Innocence*, *supra* note 110, at 439.

¹²³ *Id.*

Rather, such a decision is the result of choices made by state actors, which then unduly compel the innocent person to make a false statement that will mitigate the harm of a wrongful accusation and false confession.

III. This Court should hold that people who give coerced false confessions or plead guilty to avoid a trial penalty are not categorically barred from receiving a certificate of innocence.

Under Section 2-702, a person is precluded from a certificate of innocence if the person “by his or her conduct voluntarily cause[s] or bring[s] about his or her conviction.”¹²⁴ As it has done before,¹²⁵ the appellate court here found that by entering a guilty plea, a person necessarily has voluntarily caused or brought about their conviction.¹²⁶ Without engaging in any detailed analysis of the statute nor reviewing the legislative history, the appellate court conclusory deemed the meaning of the word “voluntarily” in the statute to be “clear.”¹²⁷ Ultimately, the appellate court held that “because [Mr. Washington’s] confession and voluntary plea of guilty caused or brought about his conviction[,]” the circuit court did not err in denying him a certificate of innocence.¹²⁸ As discussed below, the plain language of the statute, as well as the legislative intent, reveals the error in the

¹²⁴ 735 ILCS § 5/2-702(g)(4) (2021).

¹²⁵ See *People v. Amor*, 2020 IL App (2d) 190475, ¶¶ 15–24 (holding a false confession and guilty plea is voluntary conduct that caused the defendant’s own conviction).

¹²⁶ *Washington*, 2020 IL App (1st) 163024, ¶ 25.

¹²⁷ *Id.*

¹²⁸ *Id.* ¶ 29.

appellate court’s reasoning. Moreover, and significantly, if sanctioned by this Court, such a ruling will function to unjustly preclude actually innocent people, who were manipulated into “confessing” or who entered a guilty plea to remediate the harms of their wrongful conviction, from receiving compensation that the General Assembly intended them to obtain.

A. The General Assembly intended the certificate of innocence statute to certify as innocent a broad range of wrongfully convicted persons.

“In interpreting a statute, a court’s primary goal is to ascertain the intent of the legislature.”¹²⁹ When passing 735 ILCS § 5/2-702, the Illinois General Assembly “declare[d] that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims.”¹³⁰ Stated simply, the General Assembly sought to *remove* the legal barriers that would prevent an innocent person from being certified innocent. Section 2-702 is thus a remedial law, aimed at expanding the category of

¹²⁹ *Land v. Bd. of Educ. of City of Chicago*, 202 Ill. 2d 414, 421 (2002).

¹³⁰ 735 ILCS § 5/2-702(a) (2021).

wrongfully convicted individuals who have access to financial redress.¹³¹ As a “remedial statute, [it] must be liberally construed in favor of those whose problems it was meant to address.”¹³² Excluding from relief innocent persons who provided a false confession elicited by police coercion and all persons who pled guilty to avoid the trial penalty erects the type of arbitrary legal barrier the General Assembly sought to dismantle and frustrates the purpose of the statute.

In addition to the Assembly’s express statements of its intent, as this Court has explained, “[t]he language of the statute is the best indication of legislative intent, and [a court] gives that language its plain and ordinary meaning.”¹³³ “Further, where the language of a statute is clear and unambiguous, a court must give it effect as written, without reading into it exceptions, limitations, or conditions that the legislature did not express.”¹³⁴

¹³¹ The legislation’s sponsor made clear the remedial purpose of the statute.

This legislation is about men and women who have been wrongfully convicted of a crime; they never should have been in jail in the first place. And in the absence of the Governor pardoning them, they cannot get what’s rightfully theirs. So technically they’re still incarcerated because their name is not cleared. They cannot get a job and they cannot get the rightful compensation that they truly deserve because the pardon is not there. And so that’s the reason why the certificate of innocence is very important.

Ill. House Tr., 2007 Reg. Sess. No. 56 (Statement of Rep. Flowers, the bill’s sponsor).

¹³² *People v. Christensen*, 102 Ill. 2d 321, 328 (1984). This principle dates back to the 1800s. *See also Harding v. Harding*, 144 Ill. 588, 597 (1892) (finding remedial statute should be construed liberally to effectuate the remedy).

¹³³ *Rosewood Care Ctr., Inc. v. Caterpillar, Inc.*, 226 Ill.2d 559, 567 (2007).

¹³⁴ *Land*, 202 Ill. 2d at 426.

The plain language of the statute suggests that individuals, like Mr. Washington, who were coerced into falsely confessing and pled guilty should not be deemed to have acted “voluntarily.” As noted above, the plain meaning of voluntary means the person acted of his or her own free will and volition.¹³⁵ Thus, to voluntarily cause or bring about one’s conviction, the innocent person must have engaged in acts of his own free will, without compulsion, constraint, or even *undue influence* by others that resulted in his conviction. An innocent person who falsely confesses in response to police violence or psychological coercive tactics during a custodial interrogation is necessarily operating under the constraint and influence of the interrogating officers.¹³⁶ Likewise, an innocent person who falsely confesses in the context of a guilty plea is operating under the influence of the coercive plea-bargaining system—often from the confines of a cell in which he is wrongfully detained. Such action cannot be said to be truly voluntary under the plain meaning¹³⁷ of that word.¹³⁸

“[W]here an enactment is clear and unambiguous, the court is not free to depart from the plain language and meaning of the statute by reading into it

¹³⁵ “voluntarily, adv.,” *supra* note 78.

¹³⁶ *Supra* Section (I)(A)(1).

¹³⁷ See *People v. Woodard*, 175 Ill. 2d 435, 443 (1997) (“There is no rule of construction which allows the court to declare that the legislature did not mean what the plain language of the statute imports.”).

¹³⁸ *Supra* Section II.

exceptions, limitations, or conditions that the legislature did not express.”¹³⁹ The General Assembly did not explicitly address guilty pleas or false confessions, presumably because they were not a concern. If the General Assembly wanted to categorically preclude a person who pled guilty from receiving a certificate of innocence, it would have done so. A small minority of other states have wrongful conviction statutes that include such a provision. For example, an analogous Iowa statute explicitly, categorically precludes a claimant who pled guilty from receiving a certificate of innocence,¹⁴⁰ as does Massachusetts,¹⁴¹ Ohio,¹⁴² New Jersey,¹⁴³ and Oklahoma.¹⁴⁴ Thus, if the General Assembly wanted to preclude innocent people who have pled guilty from seeking relief, it would have expressly done so.

¹³⁹ *Woodard*, 175 Ill. 2d at 443.

¹⁴⁰ Iowa Code Ann. § 663A.1(b) (requiring that “The individual did not plead guilty to the public offense charged, or to any lesser included offense”).

¹⁴¹ Ann. L. Mass. Gen’l Laws, Chapter 258D § 1(c)(iii) (requiring that “He did not plead guilty to the offense charged, or to any lesser included offense”).

¹⁴² Ohio Rev Code Ann. § 2305.02 & § 2743.48(A)(2) (requiring that “The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved”).

¹⁴³ N.J. Stat. Ann. § 52:4C-3(d) (requiring that the petitioner “did not plead guilty to the crime for which he was convicted.”).

¹⁴⁴ 51 Okl. St. § 154(B)(2)(b) (requiring that “the individual did not plead guilty to the offense charged, or to any lesser included offense, but was convicted of the offense”).

B. Interpreting the word “voluntary” as a constitutional inquiry to determine whether a custodial statement was “voluntary,” rather than giving it its plain meaning, would interfere with the statute’s purpose.

Here, while not explicitly described this way, it appears that the appellate court, as it has done before,¹⁴⁵ was guided primarily by a constitutional voluntariness doctrine when determining if Mr. Washington “voluntarily cause[d] or br[ought] about his . . . own conviction” when he falsely confessed.¹⁴⁶ *Amici* urge this Court to clarify that the word “voluntary” cannot fairly be interpreted consistently with “voluntariness” under the relevant constitutional doctrines because the consequences of doing so would destroy the remedial purpose of the statute.

Under constitutional standards, coercive police tactics are permitted so long as a court determines that, under the “totality of circumstances,” a defendant’s will was not overborne at the time he confessed.¹⁴⁷ In practice, courts have, generally, interpreted this to mean that a subject’s will is “overborne” only if there is proof of extreme police coercion—such as violence, explicit threats, or the fabrication of physical evidence. Thus, countless coerced-

¹⁴⁵ *Amor*, 2020 IL App (2d) 190475, ¶¶ 15–24.

¹⁴⁶ *Washington*, 2020 IL App (1st) 163024, ¶¶ 26–29.

¹⁴⁷ *Schneckloth*, 412 U.S. 218 at 226. *See Ballard*, 206 Ill. 2d at 177; *see also United States v. Rutledge*, 900 F.2d 1127, 1130 (7th Cir. 1990) (“The policeman is not a fiduciary of the suspect. The police are allowed to play on a suspect’s ignorance, his anxieties, his fears, and his uncertainties.”).

compliant and coerced-internalized confessions extracted through psychological police coercion are legally “voluntary” and admitted into evidence.¹⁴⁸ As Judge Posner of the Seventh Circuit Court of Appeals has opined, if the definition of voluntariness was given its plain meaning and “[t]aken seriously it would require the exclusion of virtually all fruits of custodial interrogation[,]” but instead, “very few incriminating statements, custodial or otherwise, are held to be involuntary, though few are the product of a choice that the interrogators left completely free.”¹⁴⁹ Indeed, consistent with federal and state law, courts in Illinois have found confessions to be constitutionally “voluntary” even when the confession was elicited by police lies about the evidence against the accused¹⁵⁰ or when the accused was yelled at, belittled, and promised a benefit in exchange for confession during a lengthy interrogation.¹⁵¹ Accordingly, interpreting

¹⁴⁸ See Paul Marcus, *It's Not Just About Miranda: Determining the Voluntariness of Confessions in Criminal Prosecutions*, 40 Val. U. L. Rev. 601, 643 (2006) (“Many judges allow confessions into evidence in cases in which police interrogators lied and threatened defendants or played on the mental, emotional, or physical weaknesses of suspects. While judges write that they do not condone such conduct and find such practices repugnant, reprehensible, or deplorable, some of those same judges have upheld the admission of such confessions that result from those practices after applying the totality of circumstances test.”).

¹⁴⁹ *Rutledge*, 900 F.2d at 1129.

¹⁵⁰ See e.g., *People v. Martin*, 102 Ill. 2d 412, 416–19 (1984) (finding the defendant’s confession “voluntary” despite it being induced by the interrogating officers’ lie that a codefendant had implicated him in the murder); *People v. Duty*, 2018 IL App (5th) 150349-U, ¶ 48 (2018) (finding the defendant’s confession “voluntary” despite officers’ “misleading” indications that there was forensic evidence that did not actually exist).

¹⁵¹ *People v. Henslick*, 2022 IL App (4th) 200481, ¶¶ 37, 41 (2022) (finding the defendant’s statement was “voluntary” despite it being elicited after five hours of interrogation, during which officers’ cursed at defendant, belittled him, and promised he would receive the “benefit of the doubt” if he confessed).

“voluntarily” within 735 ILCS § 5/2-702 (g)(4) as akin to the constitutional inquiry is inconsistent with the plain meaning of the word (an act done absent coercion or external pressure) and is not the meaning the General Assembly intended.

Moreover, in interpreting a statute, courts “may consider not only the language of the statute but also the reason and necessity for the law, the problems sought to be remedied, the purpose to be achieved, and the consequences of construing the statute one way or another.”¹⁵² Additionally, a court “must presume that the legislature did not intend to enact a statute that leads to absurdity, inconvenience, or injustice.”¹⁵³ Here, an interpretation of “voluntary” as consistent with the constitutional voluntariness standard cannot be the intended meaning, as it would result in significant injustice. Indeed, nearly all false confessions that resulted in wrongful convictions were determined to be constitutionally “voluntary” and admitted into evidence.¹⁵⁴ So, adopting the constitutional voluntariness standard for deciding whether an innocent person “voluntarily” caused or brought about his conviction would preclude nearly

¹⁵² *Lakewood Nursing & Rehab. Ctr., LLC v. Dep't of Pub. Health*, 2019 IL 124019, ¶ 17.

¹⁵³ *Id.*

¹⁵⁴ See Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination*, 93 Cal. L. Rev. 465, 470 (2005) (stating “trial judges are often loath to find a confession involuntary;” “trial judges have a natural self-interest in favor of admitting confessions”; and a judge making “a finding that a confession was made involuntarily [is] very rare in practice”).

every innocent person who had falsely confessed and been wrongfully convicted from relief, which would frustrate the statute’s remedial purpose and lead to continued injustice for the innocent. Moreover, in light of Illinois’s history as the nation’s “false confession capital[,]”¹⁵⁵ the General Assembly cannot have intended such an unjust result for its citizens.¹⁵⁶ Rather, the Court must give effect to the plain meaning of the word “voluntary.” As discussed above, a person who voluntarily causes one’s own conviction takes actions borne fully from his free will, absent external pressure from state actors.¹⁵⁷ This type of conduct could include giving a completely *uncoerced, unprovoked* confession of guilt

¹⁵⁵ See 60 Minutes: *Chicago: The False Confession*, *supra* note 9; see also Moore, *Reviving Escobedo*, *supra* note 9, at 1029–30 (2019) (“By early 2019, Illinois had the second highest number of exonerations (296) among the fifty states, following only Texas. Nearly 80 percent (235) of the Illinois exoneration cases were from Cook County. Thus, more wrongful convictions have been detected and corrected in this single county as in the entire state of California. In 2017 alone, Cook County was responsible for almost half of the nation’s 29 exonerations attributed to false confessions.”)

¹⁵⁶ See 735 ILCS § 5/2-702(a) (2021) (“The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims. . . . It is the intent of the General Assembly that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this Section, shall, in the interest of justice, give due consideration to . . . other factors not caused by such persons or those acting on their behalf.”). See also Ill. House Tr., 2007 Reg. Sess. No. 56 (Statement of Rep. Flowers) (“[previous system] is a disservice to the men and women that have been falsely incarcerated through no fault of their own, I don’t think it’s fair. . . . They are entitled to be completely set free and given their good name back for a crime that they did not commit.”).

¹⁵⁷ *Supra* Section (I)(A)(3).

to protect another person or for notoriety,¹⁵⁸ removing or tampering with evidence, attempting to induce a witness to give false testimony, attempting to suppress testimony, or concealing the guilt of another.¹⁵⁹

As discussed above, coerced false confessions and guilty pleas by an innocent person attempting to avoid a trial penalty are the products of external compulsion—often made under the extreme stress of unjust incarceration, while considering the possibility of an incredibly lengthy prison sentence if a factfinder renders a conviction.¹⁶⁰ And, as noted, external coercion to plead guilty is even more powerful in situations where the innocent defendant falsely confessed. In these situations, the false confession makes conviction, despite actual innocence, that much more inevitable, since judges and jurors will undoubtedly be biased by

¹⁵⁸ Chapman, *Coerced Internalized False Confessions and Police Interrogations: The Power of Coercion*, *supra* note 70, at 161; *see also supra* Section (I)(A)(3).

¹⁵⁹ *See* McKinney’s 1984 Session Laws of New York, at 2932. A review of statutes from other jurisdictions illustrates the circumstances in which a wrongfully convicted person’s guilty plea could exclude them from compensation, providing specific examples of individuals whose guilty pleas deliberately caused their own conviction without coercion from state actors. In California, a wrongfully convicted person may not receive compensation if “the board finds by a preponderance of the evidence that a claimant *pled guilty with the specific intent to protect another from prosecution.*” Cal. Pen. Code § 4903(c). In Idaho, an innocent person is prevented from compensation if the person “*pled guilty with the specific intent to protect another party from prosecution for the underlying conviction that forms the basis for the claim.*” Idaho Code § 6-3502(3). Colorado precludes compensation for the actually innocent if the person pled guilty to the case in which they are actually innocent to avoid prosecution in another case in which [they are] not determined to be actually innocent. C.R.S.A. § 13-65-102(3)(b)(4)(a)(iii) (held unconstitutional on other grounds by *Nelson v. Colorado*, 137 S. Ct. 1249, 1252 (2017)).

¹⁶⁰ Subramanian et al., *In the Shadows: a Review of the Research on Plea Bargaining*, *supra* note 97, at 11.

the prejudicial confession evidence.¹⁶¹ And defense counsel, who understand the difficulty of overcoming a false confession, may even advise or pressure innocent people to plead guilty.¹⁶²

By grouping together and precluding from relief all people who choose to confess or plead guilty in the absence of state action compelling them to do so, with innocent people, like Mr. Washington, who were violently manipulated into confessing and pled guilty to avoid a trial penalty, the courts below got it wrong here. By contrast, many courts evaluating petitions of other innocent persons who pled guilty in Illinois properly certified innocent wrongfully convicted persons, including Robert Veal (pled guilty to rape and murder, sentenced to 20 years while co-defendants who went to trial were sentenced to 80–85 years),¹⁶³ Vincent Thames (pled guilty to rape and murder after co-defendants were convicted and faced lengthy sentences),¹⁶⁴ and Alhummza Stokes (pled guilty to possession of a controlled substance),¹⁶⁵ to name a few. The disparate treatment of similarly situated innocent people throughout Illinois underscores the need

¹⁶¹ Kassin, *Why Confessions Trump Innocence*, *supra* note 110, at 431.

¹⁶² *Id.* at 436–37.

¹⁶³ Rob Warden, *The Nat'l Registry of Exonerations: Robert Veal* (2019), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3827>.

¹⁶⁴ Rob Warden, *The Nat'l Registry of Exonerations: Vincent Thames* (2019), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3844>.

¹⁶⁵ Maurice Possley, *The Nat'l Registry of Exonerations: Alhummza Stokes* (2021), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5697>.

for this Court to clarify that a false confession elicited by police coercion or a guilty plea entered by a factually innocent person to avoid a trial penalty does not preclude relief under 735 ILCS § 5/2-702.

CONCLUSION

For all of the reasons discussed above, *amici curiae* urge the Court to hold that a person who gives a coerced false confession or pleads guilty did not voluntarily cause or bring about his or her conviction under Chapter 735, Section 2-702 of the Illinois Statutes, unless they have done so without compulsion from state actors. Holding otherwise would go against the legislative intent and arbitrarily prevent innocent people who have been wrongfully convicted from being certified innocent and receiving financial redress for their unjust conviction and imprisonment.

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