

NO. 07-CR-00885 & WR-72, 702-

**IN THE COURT OF CRIMINAL
APPEALS OF TEXAS**

EX PARTE MELISSA ELIZABETH LUCIO,

Applicant.

**BRIEF AMICI CURIAE OF THE AMERICAN PSYCHOLOGICAL
ASSOCIATION AND THE NATIONAL ASSOCIATION OF SOCIAL
WORKERS IN SUPPORT OF APPLICANT**

Nathalie Gilfoyle*
D.C. Bar Number 928804
Deanne Marie Ottaviano*
D.C. Bar Number 438919
AMERICAN PSYCHOLOGICAL
ASSOCIATION
750 First Street N.E.
Washington, D.C. 20002
(202) 336-5500

*Counsel for the American
Psychological Association*

**pro hac vice motion pending*

David W. Ogden*
D.C. Bar Number 375951
Daniel S. Volchok*
D.C. Bar Number 497341
Amy C. Lishinski*
D.C. Bar Number 1620295
Jeremy W. Brinster
Tex. Bar Number 24122934
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue N.W.
Washington, D.C. 20008
(202) 663-6000

*Counsel for the American
Psychological Association and the
National Association of Social Workers*

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INTEREST OF AMICI CURIAE¹

The American Psychological Association (APA) is the leading association of psychologists in the United States. A non-profit scientific and professional organization, it has approximately 135,000 members and affiliates. Among APA's major purposes are to increase and disseminate knowledge regarding human behavior, and to foster the application of psychological learning to important human concerns.

APA has filed more than 180 amicus briefs in state and federal courts around the country, including briefs regarding research on false confessions. APA's briefs have been cited frequently by courts over the years, including the United States Supreme Court. *See, e.g., Graham v. Florida*, 560 U.S. 48, 68 (2010); *Panetti v. Quarterman*, 551 U.S. 930, 962 (2007); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002); *People v. Thomas*, 8 N.E.3d 308 (N.Y. 2014); *Commonwealth v. Wright*, 14 A.3d 798, 816 n.16 (Pa. 2011); *Florida Department of Children & Families v. In re Adoption of X.X.G. & N.R.G.*, 45 So. 3d 79, 87 n.10 (Fla. Dist. Ct. App. 2010); *In re Marriage Cases*, 183 P.3d 384, 441 n.59 (Cal. 2008).

APA has a rigorous approval process for amicus briefs, the touchstone of which is an assessment of whether there is sufficient scientific research, data, and

¹ No person other than amici and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See Tex. R. App. P. 11.*

literature on a question before a court that APA can usefully contribute to the court's understanding and resolution of that question. APA regards this as one of those cases because the issues addressed herein are the existence of false confessions as well as the police-interrogation techniques that are associated with such confessions, particularly when applied to individuals with certain known characteristics. There is substantial psychological and sociological research relevant to those issues, research (cited herein) indicating that several well-documented risk factors for false confessions are relevant to this case.

The National Association of Social Workers (NASW), founded in 1955, is the largest association of professional social workers in the United States, with 110,000 members in 55 chapters. NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education and enforces the NASW Code of Ethics. In alignment with its mission to ensure the efficacy and quality of practicing social workers, NASW provides resources and develops policy statements on issues of importance to the social work profession.

Consistent with those policy statements, NASW supports abolition of the death penalty and an immediate moratorium on executions for those already

sentenced. *See* National Association of Social Workers, *Social Work Speaks-Capital Punishment and the Death Penalty* 29-34 (11th ed. 2018-2020).

IDENTITY OF PARTIES AND COUNSEL

Applicant Melissa Lucio’s brief accurately sets forth the identity of parties and counsel, save for the signatories to this brief and their counsel.

STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in Ms. Lucio’s brief.

ISSUES PRESENTED

Amici adopt the issues presented set forth in Ms. Lucio’s brief.

STATEMENT OF FACTS

Amici adopt the statement of facts set forth in Ms. Lucio’s brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

False confessions are a documented phenomenon, one that is in fact far more widespread than commonly believed. A robust and widely accepted body of scientific research has identified interrogation techniques and dispositional factors—several of which are present in this case—that increase the risk of false confessions. Amici submit that this Court, in resolving Ms. Lucio’s application, should take account of this research, which is described in the body of this brief.

I. Psychological and social-science research demonstrates that a number of oft-used police-interrogation techniques are psychologically coercive. Some of these techniques (known as “maximization”) involve exaggerating or fabricating the

strength of evidence against the accused. Others (known as “minimization”) involve downplaying the seriousness of an offense through reassurance or excuses. Both types of techniques increase the risk of a false confession, and both were used in the interrogation of Melissa Lucio. The risk of these techniques is further heightened by lengthy interrogation and sleep deprivation, both of which were also present in this case.

II. Several dispositional characteristics also amplify the danger of a false confession. One is a low IQ. Indeed, research establishes that “[i]n any discussion of dispositional risk factors for false confession, [one of the] two most commonly cited concerns [is] a suspect’s ... mental impairment.” Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 *Law & Hum. Behav.* 3, 19 (2010). Individuals with intellectual deficits, like Ms. Lucio, have both high suggestibility and difficulty comprehending legal rights and consequences, leaving them especially vulnerable to the pressure of coercive questioning. Being a survivor of abuse or trauma, as Ms. Lucio is, has likewise been shown in multiple studies to increase the risk of a false confession.

ARGUMENT

A criminal defendant’s confession “is probably the most probative and damaging evidence that can be admitted against him.” *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). “[C]onfessions have [a] profound impact on the jury, so much

so that we may justifiably doubt its ability to put them out of mind even if told to do so.” *Id.*

One reason a confession is so compelling is that many judges and jurors harbor the stubborn belief that “innocent individuals do not falsely confess.” Blandón-Gitlin et al., *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions*, 17 *Psych. Crime & Law* 239, 256 (2011).² People assume, in other words, that any confession must be true. But while many confessions *are* true—and those confessions play a critical role in obtaining valid and appropriate conviction—it is undeniable that people do confess to crimes they did not commit. Indeed, it has now been demonstrated beyond reasonable dispute that individuals have been convicted and incarcerated, sometimes for lengthy periods, for serious crimes they did not commit based largely or exclusively on false confessions. *See, e.g.*, Editorial, *False Confessions*, *N.Y. Times*, Mar. 21, 2011, at A24; *White v. Smith*, 696 F.3d 740, 743 (8th Cir. 2012) (explaining that James White, who was convicted of felony murder “primarily on the testimony and confessions of [his] co-defendants,” served 18 years in prison before DNA evidence cleared him).

² *See also* Chojnacki et al., *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 *Ariz. St. L.J.* 1, 32 (2008); Henkel et al., *A Survey of People’s Attitudes and Beliefs About False Confessions*, 26 *Behav. Sci. & Law* 555, 578 (2008).

The increasing use of DNA evidence in recent decades has confirmed how widespread the phenomenon of false confessions is. In the Innocence Project’s database of 375 DNA exonerations in the United States, false confessions had contributed to 29% of those wrongful convictions. The Innocence Project, *DNA Exonerations in the United States*, <https://innocenceproject.org/dna-exonerations-in-the-united-states/>. Within the subset of homicide cases in this sample, over 60% contained false confessions as a contributing factor. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 *Am. Psych.* 63, 63 (2018). Among the more than 3,000 wrongful convictions archived by the National Registry of Exonerations, 13% of those wrongfully convicted had falsely confessed. National Registry of Exonerations, (Cases), <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (visited Apr. 18, 2022). Again, that number is doubled within the subsample of homicide cases. *Id.*³

False confessions—the “overwhelming majority” of which “occur in murder cases,” Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 *N.C. L. Rev.* 891, 946 (2004)—are particularly difficult for judges and jurors to

³ Compared to others who are wrongfully convicted, false confessors may also be more likely to plead guilty, thereby increasing barriers to appeal. See Wynbrandt, Comment, *From False Evidence Ploy to False Guilty Plea: An Unjustified Path to Securing Convictions*, 126 *Yale. L.J.* 545, 553 (2016). Data on exonerations may thus *underrepresent* the prevalence of false confessions.

disbelieve when a confession contains accurate non-public details about the crime. In reality, however, the presence of those details has relatively little correlation with whether a confessor is innocent, because such details can become known to the individual through a process of “contamination,” in which the interrogator, either inadvertently or intentionally, supplies such details to the suspect. *See* Garrett, *The Substance of False Confessions*, 62 *Stan. L. Rev.* 1051, 1053-1054 (2010); Appleby et al., *Police-Induced Confessions: An Empirical Analysis of Their Content and Impact*, 19 *Psych. Crime & Law* 111, 116 (2013); Kassin, *Police-Induced Confessions*, 34 *Law & Hum. Behav.* at 26; Tranium, “*I Did It*”—*Confession Contamination and Evaluation*, *Police Chief Magazine*⁴; Garrett, *Contaminated Confession Revisited*, 101 *Va. L. Rev.* 395 (2015).

Based on case studies and analyses of actual false-confession cases, basic principles of psychology, and forensic research, psychologists and other social scientists have identified various factors that increase the risk of a false confession, including dispositional traits and interrogation tactics police use to elicit confessions. A significant number of these factors are present in this case.

⁴ Available at <https://www.policechiefmagazine.org/i-did-it-confession-contamination-and-evaluation/> (visited Apr. 18, 2022).

I. RESEARCH DEMONSTRATES THAT CERTAIN INTERROGATION TECHNIQUES ARE PSYCHOLOGICALLY COERCIVE AND INCREASE THE RISK OF A FALSE CONFESSION

Decades of research show that psychologically coercive techniques make false confessions more likely. Such techniques are commonly used by police in this country. Many police departments follow a set of interrogation procedures, commonly referred to as the “Reid Technique,” that dates to the 1960s. *See* Inbau et al., *Criminal Interrogation and Confessions* 185-328 (5th ed. 2013) (explaining the technique). The Reid Technique involves the use of powerful social-influence techniques (including both positive and negative incentives) aimed at producing compliance. Davis & Leo, *Commentary: Overcoming Judicial Preferences for Person-Versus Situation-Based Analyses of Interrogation-Induced Confessions*, 38 *J. Am. Acad. Psychiatry & Law* 187, 188 (2010); *see also* Kassin, *A Critical Appraisal of Modern Police Interrogations*, in *Investigative Interviewing* 207-228 (Williamson ed., 2006).

Among the most recognized coercive interrogation conditions and techniques are maximization, minimization, sleep deprivation, and overly long interrogations. All of these were part of the interrogation of Ms. Lucio.

A. Maximization Techniques

Maximization refers to “a cluster of tactics designed to convey the interrogator’s rock-solid belief that the suspect is guilty and that all denials will fail.”

Kassin, *Police-Induced Confessions*, 34 Law & Hum. Behav. at 12. Police using this technique begin an interrogation by confronting a suspect whom they believe to be guilty with strong accusations, while interrupting opportunities for objection and denial. *Id.* Police may also bolster their accusations by citing incriminating evidence, either real or manufactured. *Id.*

Research has shown that “maximization communicates an implicit threat of punishment.” Kassin, *The Psychology of Confession Evidence*, 52 Am. Psych. 221, 224 (1997). For example, when subjects reviewed transcripts of interrogations that employed maximization techniques, they expected the interrogated suspect to receive a harsher sentence. Kassin & McNall, *Police Interrogations and Confessions: Communicating Promises and Threats By Pragmatic Implication*, 15 Law & Hum. Behav. 233, 240 (1991).

The use of false evidence is a particularly potent form of maximization directly linked to the risk of false confessions. In a survey of 87 experts in confessions and interrogations, 94% confirmed that “[p]resentations of false incriminating evidence during interrogation increase the risk that an innocent suspect [will] confess to a crime he or she did not commit.” Kassin, *General Acceptance*, 73 Am. Psych. at 70, 72. And in the same study, 100% of experts agreed that “[m]isinformation about an event can alter a person’s memory for that event.” *Id.* at 70-71.

Empirical studies confirm these views. In a seminal psychological study about false confessions, students participated in a computer typing exercise where each participant was instructed not to strike a particular keyboard key. Kassin & Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 Psych. Soc'y 125 (1996). Later, when the participant's computer shut down (as it was programmed automatically to do), the participant was accused of having caused the crash by striking the forbidden key. The participant was then confronted with false evidence of his guilt: An actor working for the researcher claimed to have seen the participant strike the prohibited key. *Id.* at 126. The use of that "false evidence nearly doubled the number of students who signed a written confession, from 48 to 94%." Kassin, *Police-Induced Confessions*, 34 Law & Hum. Behav. at 17. Comparable studies have also found high false-confession rates caused by the introduction of false evidence, even where a confession was said to bear a financial consequence. See Horselenberg et al., *Individual Differences and False Confessions: A Conceptual Replication of Kassin and Kiechel (1996)*, 9 Psych. Crime & Law 1, 5 (2003) (explaining that 82% of participants signed a false confession despite being told they would lose their \$10 participation payment).

Other paradigms have revealed similar results. In one study, participants completed a computerized gambling task, and later were falsely accused of cheating by stealing "money" from a fictional bank. Nash & Wade, *Innocent But Proven*

Guilty: Eliciting Internalized False Confessions Using Doctored–Video Evidence, 23 *Applied Cognitive Psych.* 624, 625, 627-628 (2008). Half of the participants were told there was a videotape proving their theft; the other half were shown such a (doctored) video. *Id.* at 625, 628. After either one or two requests to do so, all participants in both groups signed a false confession. *Id.* at 628-630.

In light of the strength and consistency of the research in this area, the American Psychological Association has drawn special attention to the “risks of eliciting a false confession by interrogations that involve the presentation of false evidence.” American Psychological Association, *Resolution on Interrogations of Criminal Suspects* (2014) (Resolution), <https://www.apa.org/about/policy/interrogations>.

In this case, police repeatedly used maximization techniques when they interrogated Ms. Lucio. For example, Detective Rebecca Cruz told Ms. Lucio that her daughter Mariah “ended up going to the hospital,” where “the pediatricians ... can see if a child is, you know, something is of natural causes or not.” Lucio Br. Ex. 10 (Gudjonsson Report) at 24. Noting that Mariah had “a lot of bruising on her—on her body,” Detective Cruz opined that these injuries were “[n]ot consistent with a fall.” *Id.* “Somebody hit her,” Detective Cruz confidently asserted. *Id.* She also presented Ms. Lucio with false evidence, telling her that “I have medical personnel that are saying this was abuse.” *Id.* And rejecting Ms. Lucio’s explanation for the

bruising, Detective Cruz maintained “[t]here’s no way she fell off the stairs. Okay? There’s no way. A child can fall and will not have those bruises.” *Id.*

B. Minimization Techniques

The maximization tactics just discussed serve to make a suspect feel trapped, a feeling usually heightened by the suspect’s isolation throughout the interrogation. Once that occurs (or sometimes before), interrogators frequently “offer sympathy and understanding.” Kassin, *Police-Induced Confessions*, 34 *Law & Hum. Behav.* at 12. Such “minimization tactics are designed to provide the suspect with moral justification and face-saving excuses for having committed the crime,” normalizing and downplaying the crime so as to lead the suspect to see confession (for the downplayed offense) as an expedient exit strategy. *Id.* Minimization frequently also operates as a promise of leniency, one that “may well lead innocent people who feel trapped to confess.” *Id.* at 18. In the survey of 87 experts referenced above, 91% agreed that “[m]inimization tactics that communicate sympathy and moral justification for a crime lead people to infer leniency upon confession.” Kassin, *General Acceptance*, 73 *Am. Psych.* at 69, 70, 72. And the American Psychological Association’s “Resolution on Interrogations of Criminal Suspects” specifically warns of “the risks of eliciting a false confession [by interrogations] that involve minimization ‘themes’ that communicate promises of leniency.” APA Resolution, *supra*.

Numerous psychological studies document that risk. For example, one study examined minimization in the context of the computer-crash paradigm discussed above. Klaver et al., *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 13 *Legal & Criminological Psych.* 71 (2008). Again, participants were accused of causing their computers to crash by hitting a forbidden key. But for some participants, the researcher blamed the incident on overly sensitive keys, or told the participants not to “worry” because “[i]t was just an accident.” *Id.* at 77-78. The participants subjected to these minimization techniques were more likely to sign false confessions. *Id.* at 81.

Another study reached the same basic result using a different model. Students who were partnered for purposes of a problem-solving activity with a so-called confederate (an actor working for the researcher) were told that for some parts of the activity, the students and confederates were to work alone. *See* Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 *Psych. Sci.* 481 (2005). Some confederates (acting at the researcher’s secret instruction) asked their partners for help on the parts designed for individualized work, i.e., tried to induce the participant break the rules. Later, the researcher claimed that the pair had suspiciously arrived at the same wrong answer and accused the participant of cheating—an act with serious consequences in the university

setting. The participant was then confronted with (1) an explicit offer of leniency (“things could probably be settled pretty quickly”); (2) minimization (i.e., a combination of sympathy and face-saving excuses); (3) neither; or (4) both. *Id.* at 483. The explicit promise and the minimization both increased the rate of false confessions. *Id.* at 484.

Finally, in a study on how minimization communicates leniency, participants read transcripts of interrogations. Kassin & McNall, *Police Interrogations and Confessions*, 15 *Law & Hum. Behav.* at 240; *see also* Luke & Alceste, *The Mechanisms of Minimization: How Interrogation Tactics Suggest Lenient Sentencing Through Pragmatic Implication*, 44 *Law and Human Behavior* 266 (2020). In some transcripts, interrogators promised suspects they would receive a lighter sentence if they confessed. In other transcripts, interrogators used minimization techniques—for example, blaming the victim or morally excusing the crime. After reviewing the transcripts, participants were asked how severe they expected the suspect’s sentence to be in the event of a confession. Kassin & McNall, *Police Interrogations and Confessions*, 15 *Law & Hum. Behav.* at 241. In general, “subjects expected more lenient sentencing in both the minimization and promise conditions” as compared to the control group. In other words, both minimization and promises communicated leniency. *Id.*

In this case, the police used minimization techniques repeatedly during their interrogation of Ms. Lucio. For example, interrogators offered Ms. Lucio a face-saving excuse for the conduct to which they wanted her to confess, telling her that “[s]ometimes we let things get, get out of hand. Sometimes we—we’ve gone too far and realize later that we’ve gone too far. And we look back and said, ‘I should have never have done that.’” Gudjonsson Report at 27. Detectives also sought to downplay the conduct of which they suspected Ms. Lucio, reassuring her that spanking her child was not illegal. Gudjonsson Report at 23.

C. Sleep Deprivation

Coercive techniques such as maximization and minimization create a particularly high risk of eliciting a false confession when they are combined with sleep deprivation. That is because “[s]leep deprivation lowers people’s resistance to influence and impairs complex decision-making.” Kassin et al., *General Acceptance*, 73 Am. Psych. at 70-72. In particular, it impairs “the ability to anticipate risks and consequences, inhibit behavioral impulses, and resist suggestive influences.” Frenka et al., *Sleep Deprivation and False Confessions*, 113 Proc. Nat’l Acad. Sci. 2047, 2048 (2016).

In one study illustrating this point, subjects participated in the typing exercise described above, with an important difference: After the exercise was completed, the participants were kept overnight, with half sleeping eight hours (in laboratory

bedrooms) and the other half remaining awake through the night. Freneda, *Sleep Deprivation and False Confessions*, 113 Proc. Nat'l Acad. Sci. at 2047-2048. In the morning, the participants were asked to sign a statement confessing to pressing the forbidden key. *Id.* at 2048. "The odds of signing the statement were significantly greater for sleep-deprived participants than for the rested participants," with 50% of the sleep-deprived participants immediately confessing, compared to 18% of the participants who were allowed to sleep. *Id.*

Put simply, sleep deprivation "sets the stage for a false confession." Freneda, *Sleep Deprivation and False Confessions*, 113 Proc. Nat'l Acad. Sci. at 2048. Despite this (or perhaps because of it), studies have documented that police regularly conduct interrogations between midnight and 8 am, when most people are normally sleeping. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 Law Hum. Behav. 381, 392 (2007). That is essentially what happened in this case, with Ms. Lucio's interrogation beginning at 10:00 pm and continuing into the dead of night, ending after 3:00 am. Gudjonsson Report 22, 48.

D. Protracted Interrogations

Lastly, lengthy interrogations are "strongly associated with the rate of false confession." Gudjonsson, *The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions*, 12 Frontier Psych. 633936, at *3 (2021);

accord, e.g., Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. at 948-949. In lengthy interrogations, “the suspect’s resistance is worn down, coercive techniques are [more likely] used, and the suspect is made to feel hopeless, regardless of his innocence.” Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. at 948. APA’s *Resolution on Interrogations of Criminal Suspects* thus specifically warns that “interrogations that are excessive in length ... create an incentive to escape the situation ... and thereby increase the risk of false confessions.” APA Resolution, *supra*. APA accordingly “recommends[] recognizing that the risk of false confession is increased with extended interrogation times” and suggests “that law enforcement agencies consider placing limits on the length of time that suspects are interrogated.” *Id.*

Here, the interrogation of Ms. Lucio lasted over five hours (10 pm-3 am, as noted), well beyond the mean duration of 1.6 hours, *see* Kassin et al., *Police Interviewing and Interrogation*, 31 Law Hum. Behav. at 392.

II. DISPOSITIONAL FACTORS CAN PRODUCE FALSE CONFESSIONS

Research demonstrates that the psychologically coercive interrogation techniques discussed above—all four of which, as noted, were used with Ms. Lucio—are especially likely to produce a false confession when used against

individuals with certain characteristics. Two such characteristics, both of which are present in this case, are low IQ and a history of abuse or trauma.

A. Intellectual Deficits

Intellectual deficits are an established risk factor for false confessions. For example, one in-depth analysis of 245 exonerations involving false confessions determined that of those who confessed falsely, 25.7% showed “indicia of intellectual disability”—a figure significantly greater than the estimated 1% to 3% of such individuals in the general population. Schatz, Note, *Interrogated with Intellectual Disabilities: The Risks of False Confession*, 70 Stan. L. Rev. 643, 681-682 (2018). Earlier exoneration studies similarly found that the intellectually disabled are overrepresented among populations of false confessors. See Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. at 920 n.155 (noting that “at least 22% (27/125) of the proven false confessors in our study were” intellectually disabled).

Research in psychology shows that individuals with intellectual challenges—like Ms. Lucio—are prone to confess falsely for two main reasons.

First, due to cognitive deficits, such individuals struggle and often fail to comprehend legal rights and consequences. For instance, after watching a fictional interrogation video, 38% of participants with low IQs (ranging from 60 to 75) thought the suspect would be allowed to go home to await trial, compared to 5% of

those with average intelligence. Only 52% of low-IQ participants thought the suspect should obtain legal advice if innocent, compared to 90% in the average-intelligence group. Clare & Gudjonsson, *The Vulnerability of Suspects with Intellectual Disabilities During Police Interviews*, 8 *Mental Handicap Research* 110, 120-122 (1995).

Second, individuals with low intelligence tend to be more susceptible to leading questions. Indeed, there is a “significantly negative relationship between interrogative suggestibility and intellectual functioning,” such that “subjects with IQs well below average ... tend to be *markedly* more suggestible.” Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook* 382 (Wiley Series 2003) (emphasis added).⁵ And suggestibility is linked to false confessions. In a study of three groups—alleged false confessors, alleged true confessors, and those who had never confessed—alleged false confessors had the lowest IQs and highest suggestibility scores. Gudjonsson, *The Effects of Intelligence and Memory on Group Differences in Suggestibility and Compliance*, 12 *Personality & Individual Differences* 503, 504 (1991). In short, psychological research demonstrates the higher risk of false confessions from persons with limited intellectual capability.

⁵ Available at <http://www.al-edu.com/wp-content/uploads/2014/05/Gudjonsson-The-Psychology-of-Interrogations-and-Confessions.pdf>.

B. Past Trauma Or Abuse

Research has likewise demonstrated the “detrimental impact” that past trauma or abuse—sometimes referred to collectively as “negative life events”—has on “the behavior and mindset[] of an individual.” Drake, *Interrogative Suggestibility, Self-Esteem, and the Influence of Negative Life-Events*, 13 *Legal & Criminological Psych.* 299, 300 (2008). That detrimental impact includes an increased risk of false confessions. *Id.* at 304.

Researchers have concluded that individuals with a history of negative life-events “may be more prone to feelings of uncertainty” and “be more likely to shift their initial answers in response to ... negative feedback.” Drake, 13 *Legal & Criminological Psych.* at 300-301. In addition, individuals with intense negative life experiences “may perceive ... negative feedback more negatively,” and have a “lesser resilience to ... negative feedback.” Drake, *Interrogative Suggestibility: Life Adversity, Neuroticism, and Compliance*, 48 *Personality & Individual Differences* 493, 496 (2010). They also may resort to compliance “as a coping mechanism during perceived difficulty, uncertainty, and expectations of success during questioning.” *Id.* at 497. These behavioral responses all create an increased risk of false confessions.

Research confirms that risk. For instance, in one study, a randomized sample of individuals was asked to complete two surveys: one designed to ascertain

“susceptibility to either leading questions or negative feedback,” and the other designed to determine past exposure to negative life events. Drake, 13 Legal & Criminological Psych. at 300-302. The study found significant correlations between past negative life events and susceptibility during questioning. *Id.* at 304. The study concluded that “interviewees with a high number of negative life-events may more easily accept any misleading information put forward to them, as well as be more prone to shifting their initial answers in response to interrogative pressure,” and that “false confessions may also be more likely as a result.” *Id.* at 306. The researchers accordingly recommended that individuals with negative life events “be considered vulnerable witnesses, in need of protection from the coercive tactics often employed” in police interviews. *Id.*

Ms. Lucio’s life was marked by a serious of “negative life events.” She was sexually abused by her mother’s partner and others throughout her childhood, and that cycle continued in her own intimate relationships, which were verbally, physically, and sexually abusive. *See* Lucio Br. 9-10.

* * *

Ms. Lucio’s confession, which occurred within hours of learning of her child’s death, bears several hallmarks that psychological research shows to be correlated with false confessions: It went on for hours (in the dead of night, meaning Ms. Lucio was almost certainly sleep-deprived); police maximized the evidence against Ms.

Lucio and minimized her culpability; and Ms. Lucio has low intelligence as well as a history of trauma.

CONCLUSION AND PRAYER

In resolving Ms. Lucio's application, the Court should take account of the social-science research regarding false confessions discussed herein.

Respectfully submitted,

Nathalie Gilfoyle*
D.C. Bar Number 928804
Deanne Marie Ottaviano*
D.C. Bar Number 438919
AMERICAN PSYCHOLOGICAL
ASSOCIATION
750 First Street N.E.
Washington, D.C. 20002
(202) 336-5500

*Counsel for the American
Psychological Association*

**pro hac vice motion pending*

David W. Ogden*
D.C. Bar Number 375951
Daniel S. Volchok*
D.C. Bar Number 497341
Amy C. Lishinski*
D.C. Bar Number 1620295
Jeremy W. Brinster
Tex. Bar Number 24122934
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue N.W.
Washington, D.C. 20008
(202) 663-6000

*Counsel for the American Psychological
Association and the National Association
of Social Workers*

CERTIFICATE OF COMPLIANCE

This brief complies with the word-limit requirements for amicus briefs contained in the Texas Rules of Appellate Procedure, in that it contains a total of 4,571 words, excluding the portions that can be excluded pursuant to those same rules.

/s/ Jeremy W. Brinster

Jeremy W. Brinster

CERTIFICATE OF SERVICE

On April 18, 2022, the foregoing was served via efile on the following counsel of record for all parties in this case:

Luis V. Saenz
Edward Sandoval
94 East Harrison Street
Fourth Floor
Brownsville, Texas 78520
956-544-0849
District.attorney@co.cameron.tx.us
Edward.Sandoval@co.cameron.tx.us

Sandra Babcock
157 Hughes Hall
Ithaca, New York 14853
(607)255-5278
slb348@cornell.edu

Vanessa Potkin
Jane Pucher
Lauren Gottesman
The Innocence Project
40 Worth Street, Suite 701
New York, New York 10013
(212)364-5359
vpotkin@innocenceproject.org

A.Richard Ellis
Texas Bar No. 06560400
75 Magee Ave.
Mill Valley, CA 94941
(415)389-6771
a.r.ellis@att.net

/s/ Jeremy W. Brinster

Jeremy W. Brinster