No. 07-1529

In The Supreme Court of the United States

JESSIE JAY MONTEJO,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Louisiana

SUPPLEMENTAL BRIEF FOR THE STATES OF NEW MEXICO, ALABAMA, COLORADO, DELAWARE, FLORIDA, KANSAS, PENNSYLVANIA, UTAH, WASHINGTON, AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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SUPPLEMENTAL QUESTION PRESENTED

Should *Michigan v. Jackson*, 475 U.S. 625 (1986), be overruled?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES:

TABLE OF AUTHORITIES – Continued

Page

INTEREST OF THE *AMICI CURIAE*

The *Amici* States have a direct interest in this case because resolution of the question whether *Michigan v. Jackson* should be overruled will affect the States' "compelling interest in finding, convicting, and punishing those who violate the law." *See Moran v. Burbine*, 475 U.S. 412, 426 (1986).

SUMMARY OF THE ARGUMENT

In *Michigan v. Jackson*, 475 U.S. 625 (1986), the Court adopted the rule that police may not ask a formally-charged defendant to answer questions without counsel present when the defendant requested the assistance of counsel at arraignment. The rule is designed to protect defendants from police coercion in obtaining a waiver of the right to counsel, and is based on the premise that "suspects who assert their right to counsel are unlikely to waive that right voluntarily in subsequent interrogations". *Michigan v. Harvey*, 494 U.S. 344, 350 (1989).

Jackson's premise, borrowed from *Edwards v. Arizona*, 451 U.S. 477 (1981), bears no relationship to its goal of preventing coerced waivers of the right to counsel. The presumption of *Edwards*, that a second request for a waiver of the right to counsel is coercive, is justified when the defendant's response to an initial request notifies the police of the defendant's choice to speak to police only through counsel. Yet, the *Jackson* rule is triggered by a general assertion of

the right to counsel made to a judge at a stage of the prosecution other than the interrogation. Thus, the rationale that supports the *Edwards* rule is entirely lacking in the Sixth Amendment context. *Jackson* was wrongly decided and, therefore, should be overruled.

Additional reasons for overruling *Jackson* include developments in the law that have undermined the doctrinal underpinnings of *Jackson* and that have dispelled the notion that the Sixth Amendment protects the attorney-client relationship. Since deciding *Jackson*, the Court has abandoned its view that counsel's role in pretrial interrogation is "vitally important", *Massiah v. United States*, 377 U.S. 201, 206 (1964), and has found, instead, that counsel's role in pretrial interrogation is "relatively simple and limited", *Patterson v. Illinois*, 487 U.S. 285, 299-300 (1988). That change undermines the doctrinal underpinnings of *Jackson*, which find their roots in *Massiah*. In addition, since deciding *Jackson*, the Court has held that the Sixth Amendment right to counsel is offense specific and, thus, police may question a represented defendant about uncharged crimes. *Texas v. Cobb*, 532 U.S. 162 (2001). The Court has also recognized that a formally-charged defendant may initiate police questioning, even if he has retained or requested counsel. *Harvey*, 494 U.S. at 352. These decisions make clear that the Sixth Amendment does not protect the attorney-client relationship.

Two additional, related justifications for overruling *Jackson* are: (1) the *Jackson* rule has proven to

be unworkable by the variety of procedures adopted by States to fulfill their obligation to provide counsel to indigent criminal defendants, and (2) overruling *Jackson* would not undermine defendants' Sixth Amendment right to have counsel present during an interrogation. The practical effect of overruling *Jackson* is that police would be allowed to ask a formally-charged defendant to waive his Sixth Amendment right and agree to answer questions without counsel present. The requirements of *Miranda* and *Edwards* ensure that such a waiver is made voluntarily, knowingly and intelligently.

ARGUMENT

A person charged with committing a crime has the right to the assistance of counsel in defending against the charge. *See* U.S. Const. amend. VI; *Patterson*, 487 U.S. at 290. Like other constitutional rights, the right to the assistance of counsel in defense of criminal charges may be waived. *Harvey*, 494 U.S. at 352-353. Such a waiver is valid if it is given voluntarily, knowingly, and intelligently. *Patterson*, 487 U.S. at 296 (quoting *Moran* 475 U.S. at 422-423). In *Jackson*, however, the Court set-aside that fact-based test in favor of a supposedly bright-line prophylactic rule intended to prevent Sixth Amendment violations in pretrial interrogations. The Court held: "if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceeding, of his right to

counsel, any waiver of the defendant's right to counsel for that police initiated interrogation is invalid." *Jackson*, 475 U.S. at 636.

SPECIAL JUSTIFICATION EXISTS FOR OVERRULING *JACKSON*

As this Court has noted, "the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensible." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992) (plurality opinion). Also necessary to the rule of law is the ability of the Court to revisit decisions that are "unworkable or badly reasoned", *Payne v. Tennessee*, 501 U.S. 808, 827 (1991), particularly decisions interpreting the Constitution which "can be altered only by constitutional amendment or by overruling [] prior decisions", *Agostini v. Felton*, 521 U.S. 203, 235 (1997). Thus, the Court does not view *stare decisis* as an "inexorable command; rather, it 'is a principle of policy and not a mechanical formula of adherence to the latest decision.'" *Payne*, 501 U.S. at 828 (quoting *Helvering v. Hallock*, 309 U.S. 106, 119 (1940)).

In *Casey*, the Court explained that reexamining a prior decision involves "a series of prudential and pragmatic considerations". *Casey*, 505 U.S. at 854. Those considerations include (1) whether the prior decision has proven to be unworkable, (2) whether

reliance on the prior decision is such that overruling the decision would create inequitable hardship, and (3) whether the doctrinal underpinnings of the prior decision have been undermined by the development of the law or changes in how the facts are viewed in subsequent decisions. *See Casey*, 505 U.S. at 854-855. In addition, particularly in constitutional cases, the Court will consider whether the prior decision was wrongly decided. *See Payne*, 501 U.S. at 829-830.

Each of those considerations weighs in favor of overruling *Jackson*. First, *Jackson* was wrongly decided because it was based on the unsupported premise that a formally-charged defendant who asserts his right to counsel at an early stage of the prosecution would not willingly waive that right in a subsequent stage, and because the rule established in *Jackson* reaches beyond its intended purpose of preventing coerced waivers of the right to counsel during interrogation. Second, the doctrinal underpinnings of the decision in *Jackson* have been undermined by the Court's subsequent decisions. Third, the rule established in *Jackson* has proven to be unworkable. In addition, no equitable hardship would result from overruling *Jackson* because doing so would not adversely affect criminal defendants' Sixth Amendment right to counsel.

A. *Michigan v. Jackson* was wrongly decided.

The decision in *Jackson* involved the validity of a formally-charged defendant's waiver of the Sixth Amendment right to counsel during a police interrogation. *Jackson*, 475 U.S. at 636. The touchstone of a valid waiver of a constitutional right is that the waiver is voluntary, knowing and intelligent. *See Edwards*, 451 U.S. at 482. Borrowing from its Fifth Amendment jurisprudence, the Court in *Jackson* established a presumption that a waiver of the right to counsel during interrogation is not voluntary when obtained by police after the defendant has asserted his Sixth Amendment right to counsel. *See Harvey*, 494 U.S. at 350. *Jackson* was wrongly decided because that presumption does not logically apply in the Sixth Amendment context.

In the Fifth Amendment context, police are permitted to make one initial request for an uncharged suspect to waive his Fifth Amendment rights and talk to police without counsel present. If the suspect refuses to waive his rights and requests a lawyer, police may not make a second or subsequent request for a waiver.[1] *Edwards*, 451 U.S. at 484-485; *McNeil v. Wisconsin*, 501 U.S. 171 (1991). Thus, the

[1] Except, perhaps, when there is a break in custody or a substantial lapse in time, as a second request under such circumstances would be consistent with the anti-badgering purpose of *Edwards*. *See Harvey*, 494 U.S. at 350 (recognizing the anti-badgering purpose of *Edwards*).

Court assumes that a subsequent request for a waiver is coercive. *See Harvey*, 494 U.S. at 350. To the extent that assumption is reasonable, it is so because it balances society's compelling interest in investigating, solving, and punishing criminal activity with a suspect's right to have counsel present during an interrogation. *See Moran*, 475 U.S. at 426. In furtherance of society's interest, police may make at least one request for a waiver; in furtherance of the individual's interest, police are prevented from badgering suspects into waiving their rights by repeatedly requesting waivers.

In *Jackson*, the Court applied the Fifth Amendment rule to the Sixth Amendment context. In so doing, however, the Court created a rule that prohibits police from making an initial request for an accused to waive his right to counsel during an interrogation. In contrast to the Fifth Amendment rule, which is triggered by a specific, unambiguous request to police for the assistance of counsel, the *Jackson* rule is triggered by a general assertion of the right to counsel made to a judge at an early stage in the proceedings. *Jackson*, 475 U.S. at 630-632. Because the assertion of the Sixth Amendment right occurs at a stage in the prosecution other than the interrogation, the Court must presume that, when a formally-charged defendant asserts the right to counsel at one stage, he intends the assertion to apply "at all critical stages of the prosecution." *Jackson*, 475 U.S. at 633. In adopting that assumption, the Court explained that the "standard for assessing waivers of

constitutional rights" requires indulging "every reasonable presumption against the waiver." *Jackson*, 475 U.S. at 633 (quotation marks omitted).

The Court's analysis, however, failed to establish why the presumption is reasonable. As the *Jackson* dissent noted, the Fifth Amendment rule "does not arise until affirmatively invoked by the defendant during custodial interrogation." *Jackson*, 475 U.S. at 641 (Rehnquist, J., dissenting). In contrast, the *Jackson* rule is not tied to a request for counsel during a custodial interrogation. Rather, it is triggered by "the otherwise legally insignificant request for counsel" at arraignment. *Id*. at 642. Thus, the dissent further noted, there is "no satisfactory explanation" for extending "the *Edwards* rule to the Sixth Amendment," while limiting "that rule to those defendants foresighted enough, or just plain lucky enough, to have made an explicit request for counsel" which is "completely unnecessary for Sixth Amendment purposes." *Id*. at 642. Justice Kennedy made a similar observation in his concurring opinion in *Cobb*, stating:

> [T]he acceptance of counsel at arraignment or similar proceeding only begs the question: acceptance of counsel for what? It is quite unremarkable that a suspect might want the assistance of an expert in the law to guide him through hearings and trial, and the attendant complex legal matters that might arise, but nonetheless might choose to give

> on his own a forthright account of the events that occurred.

Cobb, 532 U.S. at 177 (Kennedy, J., concurring).

Indeed, it is entirely logical that a defendant would attempt to maintain some control over the course of an investigation through his statements to the police. *See Moran*, 475 U.S. at 426 (*Miranda* gives "the *defendant* the power to exert some control over the course of the interrogation."). Moreover, as this Court has acknowledged, "the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good". *McNeil*, 501 U.S. at 181 (quotation marks omitted). "Admissions of guilt resulting from valid *Miranda* waivers are more than merely desirable; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Id*. (quotation marks omitted). Thus, "[a] court-made rule that prevents a suspect from even making this choice serves little purpose, especially given the regime of *Miranda* and *Edwards*." *Cobb*, 532 U.S. at 177 (Kennedy, J., concurring).

As noted above, a defendant may waive his rights under both the Fifth and Sixth Amendments. An unambiguous assertion of those rights notifies police that the defendant does not wish to waive his constitutional rights and, therefore, justifies a presumption that most subsequent attempts to obtain a waiver are coercive. *See Davis v. United States*, 512 U.S. 452, 458-460 (1994). However, the presumption adopted in *Jackson* – that a defendant who requests counsel at

arraignment would not willingly agree to an uncounseled interrogation – bypasses the necessity of an unambiguous assertion of the right. Therefore, the rationale supporting the presumption that subsequent attempts to obtain a waiver are coercive is lacking in the Sixth Amendment context. Just as an initial request for a waiver of the Fifth Amendment right to counsel during an interrogation is not presumptively coercive, an initial request for a waiver of the Sixth Amendment right to counsel during interrogation, likewise, is not presumptively coercive. *Jackson* presumed otherwise and, therefore, was wrongly decided.

B. Developments in the law have undermined the doctrinal underpinnings of *Jackson* and have dispelled the notion that the Sixth Amendment protects the attorney-client relationship.

1. The doctrinal underpinnings of *Jackson* are found in the Court's decision in *Massiah*, in which the Court first recognized that the Sixth Amendment protects a formally-charged defendant's right to communicate with police only through counsel. *Massiah*, 377 U.S. at 206. In *Massiah*, the Court held that the police violate a defendant's Sixth Amendment right by "deliberately elicit[ing]" information from him in the absence of his retained counsel after he has been indicted. *Id*. In so holding, the Court viewed counsel's participation in pretrial interrogation as

"vitally important" to "perhaps the most critical period of the proceedings" – the time between arraignment and commencement of the trial. *Id*. at 205 (quotation marks omitted).

The Court has since modified its view of the role of counsel during a pretrial interrogation. In *Maine v. Moulton*, the Court recognized "that the right to counsel is shaped by the need for the assistance of counsel". 474 U.S. 159, 170 (1985) (quotation marks omitted). In *Patterson*, the Court described its inquiry as "a pragmatic assessment of the usefulness of counsel to the accused at the particular proceeding, and the dangers to the accused of proceeding without counsel." *Patterson*, 487 U.S. at 298. Following this approach, the Court found that "the role of counsel at questioning is relatively simple and limited" and that there is "no problem in having a waiver procedure at that stage which is likewise simple and limited." *Id*. at 300. In so doing, the Court contrasted the simple procedure sufficient for a valid waiver of the right to counsel during interrogation with the elaborate procedure required for waiving the right to counsel during trial. The Court explained,

> [W]e require a more searching or formal inquiry before permitting an accused to waive his right to counsel at trial than we require for a Sixth Amendment waiver during post-indictment questioning – *not* because post-indictment questioning is less important than at trial . . . but because the full dangers and disadvantages of self-representation during

> questioning are less substantial and more obvious to an accused than they are at trial.

Id. at 299-300 (citation and quotation marks omitted).

The view expressed in *Patterson* is a substantial change from the view stated in *Massiah*. Moreover, it is a change that undermines the central premise of *Jackson*. As noted above, the central premise of *Jackson* is that a defendant who invokes the right to counsel at arraignment would not willingly waive the right to counsel during an interrogation. That premise is based on the view expressed in *Massiah* that counsel's role in a pretrial interrogation is as vital to the defense as counsel's role at trial. Considering the Court's revised view that counsel's role in pretrial interrogation is less vital to the defense than counsel's role at trial, the premise of *Jackson* is no longer justified (if it ever was).

2. In *Jackson*, the Court relied on the principle that a formally-charged defendant has "'the right to rely on counsel as a "medium" between him and the State.'" *Jackson*, 475 U.S. at 632 (quoting *Moulton*, 474 U.S. at 176). The Court cited that principle in *Patterson* to suggest, in dictum, that the Sixth Amendment protects "the sanctity of the attorney-client relationship". *Patterson*, 487 U.S. at 290 n.3 (citing *Moulton*, 474 U.S. at 176). However, this suggestion was not only inconsistent with the Court's rationale in *Patterson* itself, but has also been dispelled by subsequent decisions.

In *Patterson*, the defendant argued that "because his Sixth Amendment right to counsel arose with his indictment, the police were thereafter barred from initiating a meeting with him." *Patterson*, 487 U.S. at 290. The Court rejected that argument as inconsistent with *Edwards* and, by extension, with *Jackson*. *Id*. at 291. In so doing, the Court explained that, once the accused has "expressed a desire to communicate with police only through counsel", *Edwards* bars police-initiated interrogation, but does not bar questioning initiated by the accused. *Id*. The Court further explained that "[p]reserving the integrity of an accused's choice to communicate with police only through counsel is the essence of *Edwards* and its progeny – not barring an accused from making an *initial* election as to whether he will face the State's officers during questioning with the aid of counsel, or go it alone." *Id*. (emphasis in original).

That explanation is inconsistent with the notion that the Sixth Amendment protects the attorney-client relationship. First, the Court has clearly indicated that the Sixth Amendment protection is afforded to the "accused's choice to communicate with police only through counsel". *Id*. That is consistent with the Court's recognition that a defendant may waive his right to counsel during an interrogation. *See Brewer v. Williams*, 430 U.S. 387, 404 (1977); *Moran v. Burbine*, 475 U.S. at 428; *Patterson*, 487 U.S. at 293. Moreover, protection of the accused's choice is far different from protection of the attorney-client relationship. If it is the attorney-client relationship

that is protected by the Sixth Amendment, then an accused who has retained counsel or has been appointed counsel could not make the choice to speak to police without counsel and initiate questioning. This Court has rejected such a result. *See Patterson*, 487 U.S. at 290; *Moran*, 475 U.S. at 430-431. As the Court stated in *Harvey*, "nothing in the Sixth Amendment prevents a suspect charged with a crime and represented by counsel from voluntarily choosing, on his own, to speak with police in the absence of counsel." *Harvey*, 494 U.S. at 352.

The notion that the Sixth Amendment protects the attorney-client relationship is also inconsistent with the Court's decisions establishing the point at which the constitutional right to counsel attaches. The Sixth Amendment right to counsel attaches at the initiation of a criminal prosecution, which may occur "by way of formal charge, preliminary hearing, indictment, information, or arraignment", or by the "defendant's initial appearance before a judicial officer". *Rothgery v. Gillespie County, Texas*, 128 S.Ct. 2578, 2583, 2592 (2008) (quotation marks omitted). The right is "offense specific", that is, it "cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced" and it attaches only to the offense charged. *McNeil*, 501 U.S. at 175. Therefore, when a suspect has been indicted on one charge and has retained or requested counsel to assist his defense against that charge, police may initiate an interrogation of the suspect regarding a crime not charged in the indictment. *Id*. at 175-176.

Such interrogation is allowed even when the uncharged crime was allegedly committed in the same course of events as the charged crime, as long as the uncharged crime that is the subject of the police-initiated interrogation is a separate offense, as defined by the *Blockberger* test. *Cobb*, 532 U.S. at 173. These decisions dispel the notion that the Sixth Amendment protects the attorney-client relationship because they do not turn on the existence of such a relationship. Indeed, these decisions allow police-initiated interrogation in spite of the existence of the attorney-client relationship. Therefore, the Court should reject any suggestion that *Jackson* should not be overruled because it protects the attorney-client relationship.

C. The rule established in *Michigan v. Jackson* has proven to be unworkable.

Two conditions are necessary for the application of the *Jackson* rule: (1) the defendant's Sixth Amendment right to counsel must have attached at some time before the interrogation, and (2) the defendant must have asserted his right to counsel at an earlier stage of the proceedings, such as arraignment. These conditions render the *Jackson* rule unworkable.

As noted above, the Sixth Amendment right to counsel attaches at the initiation of a criminal prosecution, which may occur through an indictment or information, a preliminary hearing, an arraignment, or other initial appearance before a judicial officer. *Rothgery*, 128 S.Ct. at 2583, 2592. The defendant's

presence is not required at every stage at which attachment may occur, such as the filing of an indictment or information. As a result, not all defendants have the opportunity to assert the right to counsel at the time the right attaches. Indeed, a post-indictment interrogation may be the first opportunity for many formally-charged defendants to assert the right to counsel.

Petitioner suggests that this problem demonstrates the unfairness of requiring an affirmative assertion of the right to trigger the *Jackson* rule. *Amici* suggest, however, that this problem demonstrates the unreasonableness of applying the *Edwards* rule to the Sixth Amendment. As discussed above, applying the *Edwards* rule to the Sixth Amendment prevents police from seeking an initial waiver of the right to have counsel present during interrogation. This result is unreasonable because it does not provide protection of that right that is not already provided by *Miranda* and *Edwards, see Cobb*, 532 U.S. at 175 (Kennedy, J., concurring), but it imposes a substantial cost on society's interest in effective law enforcement, *see McNeil*, 501 U.S. at 181 (rejecting a request to abandon the requirement under *Jackson* of the attachment of the right because doing so would seriously impede effective law enforcement).

Moreover, because the right to counsel may attach when the defendant does not have an opportunity to assert the right, it is unreasonable to impute to the police the knowledge of the defendant's assertion. For example, because the Court has equated the

act of retaining counsel with an assertion of the right to counsel, *Moulton*, 474 U.S. at 162, 171, a defendant charged by indictment may assert the right simply by retaining counsel. There is no reason to assume that the police would have knowledge of that act and imputing knowledge would be patently unreasonable.

This case illustrates how the *Jackson* rule is unworkable. Having been told by this Court that it must provide counsel to indigent criminal defendants, *Gideon v. Wainwright*, 372 U.S. 335 (1963), the State of Louisiana adopted a rule with the express purpose of ensuring that it fulfills its obligation – the rule requiring a hearing to appoint counsel within 72 hours of arrest. Under this rule, appointment is automatic and requires no request by the defendant. Other states employ different procedures, some requiring a request, others making appointment automatic. To accommodate the variety of procedures adopted by states to ensure that their obligation to provide counsel to indigent criminal defendants is met, the Court employs two sweeping assumptions. The Court assumes that police are aware of a defendant's assertion of the right regardless of the circumstances surrounding the assertion. *Jackson*, 475 U.S. at 634. The Court also assumes that any request for counsel is intended to apply to all stages of the prosecution, including interrogation, regardless of the circumstances surrounding the request. *Jackson*, 475 U.S. at 633. In addition, for *Jackson* to apply in this case, the Court must assume that Petitioner's acquiescence in the automatic appointment was a

request for counsel intended to apply to all stages of the prosecution, including pretrial interrogation. The fact that assumptions are necessary to the implementation of the *Jackson* rule demonstrates the unworkability of the *Jackson* rule and belies the Court's view that it is a "bright-line" rule.

Overruling *Jackson* would leave formally-charged defendants with the protections provided by *Miranda* and *Edwards* and would eliminate the necessity of making assumptions about the defendant's intent or willingness to speak to police without counsel or about the knowledge of police regarding the defendant's intent. Thus, overruling *Jackson* would leave in place a truly administrable bright-line rule, not merely the hope of one.

D. Overruling *Michigan v. Jackson* would not undermine criminal defendants' Sixth Amendment right to counsel.

Overruling *Jackson* would simply allow police to ask a formally-charged defendant to waive his right to counsel during interrogation. When a defendant agrees to such a request, he must do so voluntarily, knowingly, and intelligently. *Patterson*, 487 U.S. at 292. *Miranda* warnings, which are constitutionally required, *Dickerson v. United States*, 530 U.S. 428 (2000), inform the defendant of his right to counsel during interrogation and the consequences of waiving that right, thus ensuring that a waiver is knowing and intelligent. *See Patterson*, 487 U.S. at 293-294.

Miranda warnings also ensure that the defendant's waiver is the result of his own free-will and not the result of police coercion. *See Colorado v. Spring*, 479 U.S. 564, 573-574 (1987).

Overruling *Jackson* would not undermine the distinctions this Court has drawn between Fifth and Sixth Amendment rights. For example, "the surreptitious employment of a cellmate, or the electronic surveillance of conversations with third parties may violate the defendant's Sixth Amendment right to counsel even though the same methods of investigation might have been permissible before arraignment or indictment." *Jackson*, 475 U.S. at 632 (citations omitted). Similarly, although a postindictment lineup does not implicate the Fifth Amendment, it does implicate the Sixth Amendment because it is a critical stage of the proceedings. *Id*. at 632 n.5 (citing *United States v. Wade*, 388 U.S. 218 (1967)).

Overruling *Jackson* would not undermine these distinctions. When police surreptitiously obtain incriminating statements from a formally-charged defendant, for example, the police do not request or obtain a waiver of the right to counsel. Yet, without a valid waiver, the State cannot use the defendant's statements to prove the charges against him. In cases involving postindictment lineups, overruling *Jackson* would simply allow police to ask the defendant to participate in the lineup without counsel present. As in a postindictment interrogation, the defendant would have to voluntarily, knowingly, and intelligently waive the right to have counsel present during the lineup before the police could proceed.

This Court has recognized that voluntary statements by criminal defendants are a "proper element in law enforcement", *Miranda v. Arizona*, 384 U.S. 436, 478 (1966), and are "essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Moran*, 475 U.S. at 426. As a result, the Court balances society's compelling interest with the individual's Fifth and Sixth Amendment rights by recognizing that individuals may agree to waive their rights. *Id*. Overruling *Jackson* preserves that balance by allowing police to ask a formally-charged defendant to waive his right to counsel and answer questions without counsel present, while requiring the waiver to be voluntary, knowing and intelligent.

CONCLUSION

Amici respectfully request the Court to overrule *Jackson*.

Respectfully submitted,

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