

No. 18-\_\_\_\_\_

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SUPREME COURT OF THE UNITED STATES

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Frank Adams,

*Petitioner,*

vs.

State of Alaska,

*Respondent.*

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On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## I. Question Presented

Where officers violate the rule announced in Edwards v. Arizona by interviewing a suspect who has previously invoked the Fifth Amendment right to counsel, under what circumstances does the custodial detainee “initiate” further communications with law enforcement and thereby purge the taint from the Edwards violation?

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#### **IV. Petition for Writ Of Certiorari**

Frank Adams, an inmate currently incarcerated at Goose Creek Correctional Center in Wasilla, Alaska by and through Rich Curtner, Federal Defender for the District of Alaska, respectfully petitions this court for a writ of certiorari to review the judgment of the Alaska Court of Appeals.

#### **V. Opinions Below**

The decision by the Alaska Court of Appeals denying Mr. Adams' direct appeal is reported as Adams v. State, 390 P.3d 1194 (Alaska App. February 17, 2017). The Alaska Supreme Court denied Mr. Adams' petition for hearing on December 22, 2017. That order and Justice Carney's dissent is attached at Appendix ("App.") at 1-3.

#### **VI. Jurisdiction**

Mr. Adams' petition for hearing to the Alaska Supreme Court was denied on December 22, 2017. Mr. Adams invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Alaska Supreme Court's judgment.

#### **VII. Constitutional Provisions Involved**

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### VIII. Statement of the Case

Over 50 years ago, this Court held in Miranda v. Arizona that law enforcement may not interrogate a custodial detainee who has invoked his right to counsel, unless and until counsel is made available to him. Miranda holds that the right to counsel is a significant event, and once exercised, “the interrogation must cease until an attorney is present.” 384 U.S. 474.

In Edwards v. Arizona, this Court held that when a custodial detainee has invoked his right to counsel, all subsequent statements obtained in violation of Miranda are presumed involuntary and inadmissible unless the (1) the accused himself initiated further communication, exchanges or conversations and (2) knowingly and intelligently waived the right he had invoked. 451 U.S. 477, 486, n. 9 (1981).

This case presents the question of whether the “initiation” standard of the Edwards rule is satisfied when officers violate Miranda by contacting a custodial suspect who has unambiguously invoked his right to counsel without first making counsel available to him, and the suspect responds by asking to speak with one of the interrogating officers alone.

## 1. The car crash and Adams' interrogations

On July 28, 2007, Frank Adams was arrested by Alaska State Troopers in connection with a car crash. After placing Mr. Adams in custody, investigators discovered the body of Mr. Adams' girlfriend, Stacey Johnston, located in the back of the vehicle. Mr. Adams was transported to a police station and then to a hospital where he received treatment for injuries. Before returning to the police station, he unambiguously invoked his right to counsel. Nonetheless, he was placed in an interview room, where he was contacted by two Alaska State Troopers. Sergeant Leonard Wallner, the lead investigating officer, testified in the proceedings below that he decided to interview Mr. Adams because he wanted to ascertain for himself whether Mr. Adams wished to invoke his right to counsel. During the interview, Adams repeated at least three more times that he wanted to have an attorney present. However, as the officers were leaving, Adams asked to talk with Sgt. Wallner alone. After the second officer left, Mr. Adams provided a lengthy statement. Two days later, after Mr. Adams was arraigned and appointed counsel on misdemeanor charges arising from the car crash, Wallner re-contacted Mr. Adams a second time at the jail and conducted another interrogation.

Mr. Adams was charged with murder and tampering with evidence for killing Ms. Johnston. Prior to trial, he challenged the admissibility of the statements made during the various interviews conducted by Sgt. Wallner. Adams argued that the officers had violated the rule in Edwards by initiating contact after he had expressly invoked his right to counsel under Miranda. The Superior Court conducted an

evidentiary hearing and denied the motion in an oral ruling, reasoning that Adams' Miranda rights had not been violated.

Adams went to trial and was convicted on all counts, including first- and second-degree murder, manslaughter, and tampering with physical evidence. He was sentenced to a composite sentence of 99 years with no possibility of discretionary parole.

## 2. Direct appeal

On direct appeal, Adams renewed his argument that his Miranda rights had been violated when the officers contacted him in the police station interview room. In a published opinion, the Alaska Court of Appeals reasoned that, even assuming Adams' right to counsel under Edwards had been violated, the violation did not taint the ensuing interview because Adams had requested an opportunity to speak with Sgt. Wallner alone. The court therefore concluded that "Adams's conversation with Wallner took place at Adams' initiative." Adams v. State, 390 P.3d 1194, 1200 (Alaska App. 2017). The court went on to hold that Adams' other references to wanting an attorney were not intended to terminate the interrogation.

Adams also argued that his Miranda waiver during the first interview was not voluntary and intelligent. However, because Adams had not raised the claim in the Superior Court, the Court of Appeals held that Adams had not preserved his challenge.

The court went on to hold that Adams' Sixth Amendment right to counsel had not been violated when Sgt. Wallner interviewed him following his arraignment on



the misdemeanor offenses. The court reasoned that because the Sixth Amendment right to counsel is case-specific, and because the factual and legal basis for the misdemeanors did not overlap with the felony charges, officers could interview Adams about the murder without obtaining the consent of Adams' attorney. 390 P.3d at 1201. The court also held that Adams' statements to law enforcement were voluntarily made. Id. at 1204.

Mr. Adams filed a petition for hearing with the Alaska Supreme Court, renewing his arguments that the officers' actions violated the rule in Edwards and that his request to speak with Sgt. Wallner did not purge the taint from this violation. The Alaska Supreme Court denied the petition on December 22, 2017. Justice Sue Carney dissented from the order denying the petition. In her dissent, Justice Carney pointed out that under Edwards, "once an individual who is in custody 'indicates in any manner and at any stage of the proceedings that he wishes to consult with an attorney before speaking, there can be no questioning.'" App. at 2 (citing Giacomazzi v. State, 633 P.2d 218, 222 (Alaska 1981) (quoting Miranda v. Arizona, 384 U.S. 436, 444-45 (1966))). Justice Carney stated that she would have granted the petition to determine whether the officers' decision to speak with Adams was permissible in light of the Edwards rule.

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## IX. REASONS FOR GRANTING THE WRIT

- A. To avoid erroneous deprivations of the right to counsel, this Court should clarify the “initiation” standard under Edwards that applies when law enforcement contact a suspect who has previously invoked their right to counsel

In Miranda v. Arizona, 384 U.S. 436 (1966), this Court adopted a set of prophylactic measures to protect a suspect’s Fifth Amendment right to counsel during custodial interrogation. Id., at 467. In order to dissipate the “compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely,” 384 U.S. at 467, the police must advise a suspect of his right to counsel and, “[i]f the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” 384 U.S. at 474.

Years later, in Edwards v. Arizona, 451 U. S. 477, 484-485 (1981), this Court concluded that when a custodial suspect invokes the right to counsel, traditional waiver principles were not sufficient; if a detained suspect has previously requested counsel “additional safeguards” were necessary. 451 U.S., at 484. Under the rule announced in Edwards, when a custodial detainee has invoked his right to counsel, all subsequent statements are presumed involuntary and inadmissible unless the (1) the accused himself initiated further communication, exchanges or conversations with the authorities; and (2) the accused knowingly and intelligently waived the right he had invoked. 451 U.S. 477, 486, n. 9 (1981).

If the police do subsequently initiate an encounter in the absence of counsel (assuming there has been no significant break in custody), the suspect’s statements are presumed involuntary and therefore inadmissible as substantive evidence at

trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards. McNeil v. Wisconsin, 501 U.S. 171, 177 (1991).

Here, the Court of Appeals accepted the trial court's findings that Mr. Adams unambiguously invoked his right to counsel prior to the July 28 interview. The court also did not disturb the trial court's findings that Mr. Adams had been in custody at the time the request was made. The court also conceded that the officers' interview with Adams violated Edwards. Nonetheless, the court reasoned that even if Alaska authorities violated Edwards by contacting Mr. Adams without the presence of counsel, Mr. Adams was not entitled to relief because he "initiated" further communication with the officers.

The decision by the Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of Edwards and the express purpose of the rule. The rationale of Edwards is that once a suspect indicates that "he is not capable of undergoing [custodial] questioning without advice of counsel," "any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the 'inherently compelling pressures' and not the purely voluntary choice of the suspect." Arizona v. Roberson, 486 U.S. 675, 681 (1988) (citing Edwards, 384 U.S. at 467).

The present case is a textbook example of the coercive police practices that prompted the Edwards ruling. Despite having clearly invoked his right to counsel, Mr. Adams was nonetheless placed in an interrogation room and subjected to

additional questioning by officers who had no legitimate reason for doing so. Their only excuse for re-initiating contact was a desire to hear Adams' invocation of counsel "for themselves." Despite observing that the officers' actions appeared to violate Edwards, the Court of Appeals then proceeded with its analysis without any acknowledgement that the officers' persistence may have affected the voluntariness of Adams' subsequent actions. As this Court has cautioned, if a suspect's unambiguous request for counsel must be repeatedly renewed, the suspect may begin to feel that the invocation of the right to counsel is meaningless:

"No authority, and no logic, permits the interrogator to proceed ... on his own terms and as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wishes to speak through an attorney or not at all."

Smith v. Illinois, 469 U.S. 91, 98–99 (1984) (citation omitted).

The Court of Appeals' erroneous decision circumvents this premise, effectively permitting law enforcement the right to "badger[] a defendant into waiving his previously asserted Miranda rights." McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). And, regardless whether officers engage in strong-arm tactics, the rule under Edwards is clear: officers cannot initiate interrogation of a suspect who has invoked their right to counsel. Mr. Adams' initial request for counsel was neither equivocal nor ambiguous, and all questioning should have ceased from that moment forward.

Despite the clarity of the Edwards rule, this Court has not yet settled on a single definition of what constitutes "initiation" of communications by an accused. The last time this question arose, in Oregon v. Bradshaw, 462 U.S. 1039 (1983), this Court split 4–4 regarding the proper test to apply. A plurality of this Court concluded

that the police could speak to a defendant, without depriving him of his rights, when the defendant asked, “Well, what is going to happen to me now?” even though the defendant had previously invoked his right to counsel. Id. at 1045–1046. The plurality concluded that a suspect’s question had “evinced a willingness and a desire for a generalized discussion about the investigation.” Id. The dissenting justices in Bradshaw disagreed with this definition, and indicated that in order to reinstate an interrogation after invoking the right to counsel, the suspect must “demonstrate a desire to discuss the subject matter of the criminal investigation.” Id. at 1055 (Marshall, J, dissenting). Justice Powell joined the plurality's result but not its reasoning. Under the facts then presented, the Bradshaw court did not have occasion to assess whether the suspect’s request was itself tainted by a prior Edwards violation.

This case presents this Court with an opportunity to clarify the Edwards “initiation” standard in the face of law enforcement actions that violate the Edwards rule. Absent intervention by this Court, the Alaska Court of Appeals’ published decision will work to undermine the carefully-crafted procedural safeguards that this Court has spent the past 50 years developing.

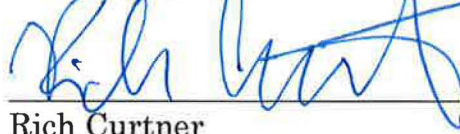
## X. CONCLUSION

For the foregoing reasons, Mr. Adams respectfully requests that this Court issue a writ of certiorari to review the judgment of the Alaska Court of Appeals.

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DATED this 22nd day of March, 2018.

Respectfully submitted,



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