

SUPREME COURT OF FLORIDA

HECTOR SANCHEZ-TORRES,

Appellant/Petitioner,

v.

Case Nos. SC19-211; SC19-
836

STATE OF FLORIDA,

Appellee,

MARK S. INCH, etc.,

Respondent.

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**MOTION FOR REHEARING AND CLARIFICATION BASED UPON
COURT'S CORRECTED OPINION**

Hector Sanchez-Torres, pursuant to Fla. R. App. P. 9.330(a)(2)(B), respectfully moves for rehearing and clarification of this Court's May 13, 2021 corrected opinion in this case. Counsel is aware of the limitations of Fla. R. App. 9.330 and does not file this request for a motion for rehearing and clarification lightly. However, the material changes made by this Court in its May 13, 2021 opinion must be addressed. This Court's initial opinion dated March 12, 2020 contained several factual errors related to Sanchez-Torres's claim of ineffective assistance of counsel based on trial counsel's failure to

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move to suppress his coerced confession. This Court incorrectly stated that Sanchez-Torres's mother and sister and multiple unnamed detectives testified at the evidentiary hearing, when in fact none of these individuals ever testified at any evidentiary hearing in this case. Slip op. at 9, 11, 12 and 13 and Notice of Correction dated May 13, 2021.

Nonetheless, this Court relied on that wholly non-existent testimony to justify the denial of Sanchez-Torres's claim. In its May 13, 2021 corrected opinion, this Court changed that reliance from the non-existent evidentiary hearing testimony in five instances to vague references to the "record." *Id.* There were no specific references to what pages of the four thousand eighty-seven-page postconviction and penalty phase records that this Court relied upon. As a result, counsel has not been afforded the opportunity to challenge the new vague "record" and "record does not" support references the Court inserted in the corrected opinion to correct its misapprehension that these witnesses testified at the evidentiary hearing.

The argument below arises out of the argument raised in Mr. Sanchez-Torres's April 23, 2020 motion for rehearing and

clarification and errors related to key facts and points of law that were overlooked or misconstrued in this Court's May 12, 2021 corrected opinion.

I. THIS COURT SHOULD GRANT REHEARING TO ADDRESS FACTUAL AND LEGAL MISTAKES REGARDING SANCHEZ-TORRES'S CLAIM OF INEFFECTIVE ASSISTANCE BASED ON THE FAILURE TO SEEK SUPPRESSION OF THE COERCED CONFESSION

Sanchez-Torres respectfully requests this Court to reconsider factual and legal errors related to trial counsel's failure to file a motion to suppress his statements made under the threat that his sister and mother would be arrested unless he spoke to detectives. This Court affirmed the denial of this ineffective assistance of counsel claim. Slip Op., at 9-10.

In order for a confession to be voluntary, it must be "the product of free and deliberate choice rather than intimidation, coercion, or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The inquiry into voluntariness of a confession asks "whether a defendant's will was overborne in a particular case." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Courts must assess "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Id.* Courts are then to

“weigh...the circumstances of pressure against the power of resistance of the person confessing.” *Stein v. New York*, 346 U.S. 156, 185 (1953). The inquiry does not turn “on the presence or absence of a single controlling criterion,” instead the inquiry must reflect “a careful scrutiny of all the surrounding circumstances.” *Id. Schneckloth*, 412 U.S. at 226.

The Supreme Court explicitly rejected the analysis used by this Court in this case in *Reck v. Pate*, 367 U.S. 433, 442 (1961). There, the Supreme Court held that a confession could be involuntary despite a lack of “police brutality,” particularly when the characteristics of the defendant make him more susceptible to police pressure. For example, in *Reck*, the Supreme Court noted that the defendant’s “youth, his subnormal intelligence, and his lack of previous experience with the police make it impossible to equate his powers of resistance to overbearing police tactics” with other defendants. *Id.* While Supreme Court jurisprudence requires “some sort of state action” to cause an involuntary confession, the “mental condition” of the individual being interrogated “is surely relevant” to that individual’s “susceptibility to police coercion.” *Colorado v. Connelly*, 479 U.S. 157, 165 (1986). Over time, “as interrogators have

turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the ‘voluntariness’ calculus.” *Id.* at 164.

In *Mincey v. Arizona*, 437 U.S. 385 (1978), the Supreme Court held a confession to be involuntary despite a lack of police conduct that would be considered improper if wielded against the average person. In *Mincey*, the police conduct was itself not coercive: law enforcement simply asked the defendant questions. 437 U.S. 399–401. The Supreme Court rejected the State’s argument that a confession could only be involuntary if there was not present “some of the gross abuses that have led the Court in other cases to find confessions involuntary, such as beatings or truth serums.” *Id.* at 401 (internal quotations omitted). Rather, under “careful evaluation of all the circumstances,” the interrogation was involuntary because the defendant’s “will was simply overborne” by mere questioning when he was in a weakened state in the hospital. *Id.*

The equation articulated by the Supreme Court is clear: a court must determine “the factual circumstances surrounding the confession,” assess “the psychological impact on the accused,” and

evaluate “the legal significance of how the accused reacted” See *Schneckloth*, 412 U.S. at 226.

In this fact, this Court has long held that the most important consideration in weighing the voluntariness of a confession is whether coercion was used. In *Traylor v. State*, 596 So. 2d 957, 964 (Fla. 1992), this Court held,

The basic contours of Florida confession law were defined by this Court long ago under our common law. We recognized the important role that confessions play in the crime-solving process and the great benefit they provide; however, because of the tremendous weight accorded confessions by our courts and the significant potential for compulsion—both psychological and physical—in obtaining such statements, a main focus of Florida. . . . confession law has always been on guarding against one thing—coercion.

Id. at 964.

This Court should grant rehearing to conduct “a careful scrutiny of all the surrounding circumstances” of the confession in this case, which includes not only the conduct by law enforcement, which was coercive “as applied to the unique characteristics” of Sanchez-Torres, but also the “unique characteristics” of Sanchez-Torres that made him particularly susceptible to such conduct. *Connelly*, 479 U.S. at 163.

A. The Court's corrected May 13 opinion disregarded the coercive conduct by law enforcement in this case.

Rehearing is necessary on this claim as it relates to the conduct of law enforcement in this case, both because this Court conducted an unconstitutional analysis and because this Court misconstrued key facts and overlooked others. This Court stated that Sanchez-Torres “has not demonstrated that detectives’ conduct was *improperly* coercive, Slip Op., at 11 (emphasis added), nor did it consider the unique characteristics of Sanchez-Torres at the time of his statements. However, this test is clearly contrary to well-established Supreme Court precedent. The initial question is whether there was any police conduct—i.e. state action—at all. *See Connelly*, 479 U.S. at 165. Once that is established, then this Court must review the totality of the circumstances surrounding how coercive the conduct by law enforcement was. There is no requirement that the conduct must be improper or illegal and to hold that it is a requirement contravenes clearly established Supreme Court precedent. *See, e.g., Mincey*, 437 U.S. at 401 (finding a confession was involuntary despite the police conduct in question merely consisted of questioning the defendant).

Detectives discovered that the phone belonging to the victim, Eric Colon, was being used when his mother received a call from it on September 30, 2008. (R 7: 192). Detectives used records of calls made from the phone to trace the phone to Maria Torres. After speaking with Torres a few days later, detectives discovered that an associate of hers, Hector Figueroa-Ramon, put the phone in a burn barrel and scattered the remains in a field, in a deliberate attempt to hide the evidence from law enforcement. (R 8: 257, 288).

Carlos Torres found a phone in his nephew's car and put it in his room. (R: 8: 246). Joann Sanchez, Sanchez-Torres's sister, found that phone and dialed the contact listed as 'mom.' (R 8: 247). The person who picked up told Sanchez that the phone belonged to her murdered son. (R 7: 194). Sanchez then called her own mother, Maria Torres, and asked her what to do with the phone. (R 8: 250). Additionally, Sanchez asked Markeil Thomas what to do with the phone and he told her "to turn off the phone and take the battery out." (R 8: 250). Torres took possession of the phone and Thomas told her to get rid of it. (MT R 6:1005). Torres took the phone to her boyfriend's house, Jose Lopez. Ultimately, Lopez and Figueroa put

the phone in a burn barrel and scattered the remains in a field. (R 8: 257).

Initially, Torres lied to law enforcement. She first told detectives that she had thrown the phone in a garbage can at her work. R 8:233. The truth was that she had given it to Figueroa while at her boyfriend's house. However, after law enforcement searched trashcans, Torres told detectives the truth. (R 8: 233-34). Despite this, detectives never threatened her with arrest or made any indication to her that she could face legal trouble until five months later.

The first time Clay County detectives interviewed Sanchez-Torres regarding the cell phone occurred that same day, October 2, 2008. (R 7: 197). Detective Sharman, who interviewed Sanchez-Torres, told him that law enforcement was able to trace the victim's phone to his family. (R 8: 228). However, Detective Sharman stated that his mother and sister were not facing legal trouble:

We're trying to keep your mother out of this here and your sister out of this here because we think she just got tied up in it because your sister found – your uncle found the phone and then Joanne used the phone. Then your mother got rid of the phone and we tracked all that down.

(R 8: 220). Detective Sharman asked Sanchez-Torres if he knew where the phone came from and if he or Markeil Thomas were involved in the murder of Eric Colon. (R 8: 230). When Detective Sharman stepped out of the room, Sanchez-Torres said:

They – damn, they trying to pull my family apart. They trying to fuck my family up. Duval County. (R 8: 223).

The case went unsolved for the next five months.¹ On March 5, 2009, detectives confronted Torres at her home. (R 8: 286). Detectives confronted her with an arrest warrant that had been partially filled out before the interview and an affidavit supporting the warrant. (R 8: 288).² The arrest warrant was for “tampering with evidence.” (R 8: 288). Torres “cried and she was so upset” that Detective West felt the need to give her a hug. (R 8: 288). Torres told Detective West that she

¹ Detectives never again visited or spoke with Jose Lopez or Hector Figueroa-Ramon regarding the phone, despite their admitting to putting the phone in a burn barrel and scattering the remains in a field and giving a deposition in this case in which Figueroa-Ramon again admitted those facts. Thomas was never charged with or threatened with charges for telling Sanchez and Torres to get rid of the phone.

² Detective West testified that the arrest warrant had only been “partially filled out” and not yet presented to a magistrate because police were “in the preliminary stages of deciding whether or not to go forward with a case of tampering with evidence against Torres” five months after the phone was destroyed, the parts were recovered and every party involved confessed their involvement. (R 8: 296-97).

had no more information about the phone and according to Torres, the detectives “said that if Hector didn’t talk to them, they were going to arrest me and Joann and they showed me the [arrest warrant].” (R Supp 1:190). Torres thought that she was going to be arrested. (R Supp 1:192). Detective West testified that he did not recall whether he made a direct threat to arrest her and that he showed Torres the arrest warrant “to make sure she was telling me the truth.” (R 2:288, 2:290).

After presenting Torres with the arrest warrant, Detective West asked her permission to speak with her fifteen-year-old daughter, Joann Sanchez. (R 8: 297). The detectives then went to her school and removed her from her class. (R 8: 297). Sanchez was questioned inside an office by the detectives with no other adults present. (R Supp 2: 204). The detectives told her that they were there to “talk about a phone and your brother.” (R Supp 2: 205). They had Sanchez describe how she came into possession of the phone and what happened with it. (R Supp 2: 207). Detectives “kept pressuring” Torres to tell them more information and eventually “they pulled out the arrest warrants” and “pointed out” “where it said my mom’s name, my name, and my uncle’s name.” (R Supp 2: 208). The

questioning lasted for 45 minutes to an hour. The detectives began threatening Sanchez:

If you don't tell us what you know, your mom could be arrested, you and your uncle, you know. How would your life be like then? You will lose everything that you worked up to.

(R Supp 2: 209). Sanchez began crying. (R Supp 2:209). Sanchez felt that she could be arrested "because of the way they made me feel." (R Supp 2: 210). Additionally, she did not feel free to leave. (R Supp 2:210). After speaking with detectives, Ms. Sanchez told her mother about the questioning. (R Supp 2: 211).

After the confrontations by the detectives, Torres spoke with Mr. Sanchez-Torres on the phone. (R Supp 1: 192). Because the Duval County Jail only allows calls out from inmates, not calls in, Torres had to wait for Sanchez-Torres to call her, which he did nearly every day. (R Supp 1: 192). Ms. Torres told him about the detectives' threats to arrest her, Sanchez-Torres's uncle and fifteen- year-old sister. Ms. Torres told him that detectives "want him to talk to them about the case." Sanchez-Torres told his mother "to let them know that they could come and talk to him." (R 1: 192).

Detective West received a call from “Hector’s mother advising me he wanted to speak to us.” (R 8: 270). Detective West “knew Mr. Sanchez-Torres had already spoken to his mother after his visit.” (R 8: 290). Yet, despite knowing this and despite threatening Sanchez-Torres’s mother and sister with arrest, Detective West was apparently “very shocked” that Sanchez-Torres wanted to speak with him. (R 8: 290).

Detective West interviewed Sanchez-Torres the next day. (R 8: 269). Detective West knew that Sanchez-Torres had been previously interviewed regarding this case and was thus aware that Sanchez-Torres was scared that his family was at risk of being torn apart. (R 8: 269, 8:223). According to Detective West, “Mr. Sanchez-Torres made it clear that he did not want his mother to get in trouble.” (R 8: 291).

Unquestionably, Sanchez-Torres was in custody at the time of the interrogation. This Court overlooked the coercive effect that has on an individual. In a case determining factors to consider in weighing the voluntariness of a confession, the Supreme Court held in *J. D. B. v. North Carolina*, 564 U. S. 261, 269 (2011), “By its very nature, custodial police interrogation entails inherently compelling

pressures. Even for an adult, the physical and psychological isolation of custodial interrogation can undermine the individual's will to resist and compel him to speak where he would not otherwise do so freely.” *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (internal citations and quotations omitted). This risk is “all the more troubling” and “more acute” the younger the subject of the custodial interrogation is. *Id.* Even more than just facing the “inherently compelling pressures” of a custodial interrogation, Sanchez-Torres was a nineteen-year-old with limited exposure to the criminal justice system facing that crippling pressure while under the belief that he had to confess or his mother, uncle, and younger sister would go to jail.

The statement from the interviewing detective that “he did not know if Sanchez-Torres even knew about the unsigned arrest warrants at the time he confessed to Mr. Colon’s murder,” Slip Op., at 12, lacks any credibility.³ But even more than that, the apparent

³ Detective West made this statement immediately after confirming that Sanchez-Torres told him that he did not want his mother getting into trouble. (R 8: 291). Further, Detective West knew that Sanchez-Torres had spoken to his mother after Detective West threatened her and Torres with arrest warrants and before Torres told Detective West that Sanchez-Torres wanted to speak with him.

subjective beliefs of the interviewing detective, even if credible, are irrelevant to the voluntariness analysis. *See Stansbury v. California*, 511 U.S. 318, 325 (1994). The question is whether the will of Sanchez-Torres was overborne by police conduct, not whether law enforcement believed that Sanchez-Torres was confessing voluntarily. Sanchez-Torres clearly knew about the arrest warrants and that was exactly why he told detectives to speak with him as soon as possible. He was under the reasonable belief, given the circumstances, that the only way to prevent the arrest of his mother, uncle, and fifteen-year-old sister was to confess to the murder.

For the inquiry as to whether the detectives used improper coercion to get Sanchez-Torres to confess, it does not matter that the detectives could have lawfully arrested his mother and sister. The fact that the detectives may have had the requisite legal authority to arrest Sanchez-Torres's mother and sister *increased* the coercive pressure placed on Sanchez-Torres. Sanchez-Torres believed that if he did not confess, his mother, uncle, and fifteen-year-old sister would be arrested. Sanchez-Torres had "no reason not to believe that the police had ample power to carry out their threats." *Hayes*, 373 U.S. at 534.

But even if it was relevant, this Court never inquired into the detectives' legal authority to arrest every person for which they filled out arrest warrants. This Court stated in its opinion that detectives had probable cause to arrest Maria Torres because they learned she "had made efforts to destroy the victim's cell phone." Slip Op., at 12. But detectives also filled out arrest warrants for Sanchez-Torres's sister and uncle. Detectives did not have probable cause to arrest Carlos Torres, who simply found the phone and gave it to Sanchez without any knowledge of the underlying circumstances.⁴ As to Sanchez, this Court apparently foreclosed its analysis after "detectives...testified that Sanchez was never told she might be arrested." Rehearing is warranted because this Court did not place due emphasis on the fact that detectives hauled a fifteen-year old child out of class into a confined room with no other adults or guardians present and interrogated her over an hour-long period,

⁴ The "person" who "alter[s], destroy[s], conceal[s], or remove[s] any record, document, or thing" does so (1) "knowing that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted and (2) with "the purpose to impair its verity or availability in such proceeding or investigation." Sec. 918.13, Fla Stat. (2019).

which included showing her an arrested warrant naming her.⁵ Additionally, it is clear the detectives did not have probable cause to arrest her. Torres testified that once Markeil Thomas told them to get rid of the phone, it was already in her possession, not Sanchez's. In saying it is not coercive to threaten to arrest someone law enforcement have probable cause to arrest, this Court ignored whether or not law enforcement even had probable cause to arrest Sanchez and Carlos Torres and whether it was coercive to threaten to arrest them, with or without probable cause.

Additionally, this Court stated that "detectives did not threaten or mistreat Sanchez-Torres during his requested interview, and...the detectives made no offers or promises in exchange for his confession." Slip Op., at 11-12. This analysis, however, is also entirely irrelevant to the consideration of the circumstances. It is notable that this

⁵ Sanchez testified that she did not feel free to leave, meaning that she was in custody. The detectives knew she was a child and were threatening her with arrest by showing her an arrested warrant with her name. This Court should grant rehearing to consider the coercive impact of conducting an interrogation of a juvenile as a means to coerce a suspect. *Cf. J.D.B. v. North Carolina*, 564 U.S. 261 (2011). It is one thing to threaten the family members of a suspect during the interrogation of that suspect, it's categorically different to interrogate the family members of a suspect in order to get to a suspect.

Court concedes that Sanchez-Torres explicitly told detectives the purpose for his confession was that “he did not want his mother getting into trouble.” Slip Op., at 11. But this Court discounted that evidence because the coercion applied by detectives against Mr. Sanchez-Torres happened indirectly and outside of the interrogation room. The Supreme Court has never required that coercion be direct and inside the interrogation and to require otherwise contravenes clearly established Supreme Court precedent. *See Schneckloth*, 412 U.S. at 228 (it does not matter if the coercion is “by explicit or implicit means, by implied threat or covert force”).

That being said, there was a clear offer made in exchange Sanchez-Torres’s confession, which was made indirectly. Detectives threatened to arrest Sanchez-Torres’s mother, uncle, and sister if he did not confess. Ms. Torres testified that they made this threat directly to her and she relayed the threat to Sanchez-Torres, who in turn requested to speak with the detectives. Sanchez-Torres then confessed and law enforcement never arrested anyone for evidence tampering in this case. Therefore, it does in fact appear that detectives got the benefit of their strong-armed bargain, and in turn, never prosecuted the case against Sanchez-Torres’s family.

The detectives made the coercion clear by only filling out arrest warrants for Sanchez-Torres's mother, uncle, and fifteen-year-old sister. There were two other parties involved: Markeil Thomas and Hector Figueroa-Ramon. Thomas is the one who instructed Torres and her daughter to "get rid of the phone" and Figueroa-Ramon is the one who actually destroyed the phone and scattered the remains. If police were actually targeting the crime of tampering with evidence, there would have been warrants made out for them as well. However, because these individuals were not members of Sanchez-Torres's family, their arrests would not pull his family apart, and thus would not contribute to coercing Sanchez-Torres.

It is clear that this coercion was the only reason Sanchez-Torres spoke to detectives and confessed to the murder of Eric Colon. Detectives threatened his mother, uncle, and fifteen-year-old sister five months after first learning about the destruction of the phone. Detectives made both so visibly upset that they each cried under questioning. His mother told him about the threats the first opportunity she had and he immediately told her in response to call the detectives to speak with him instead because "he did not want his mother getting into trouble." Slip Op., at 11. Sanchez-Torres had

not called law enforcement or requested to speak with detectives at any point during the previous five months. Detective West might have claimed that he was “shocked” to hear that Sanchez-Torres wanted to speak with him, but this Court is required to view the circumstances surrounding the confession as they actually were. Sanchez-Torres said during his first interview that they were tearing his family apart. Because the investigation was dragging on without any leads, detectives took advantage of this weakness.

The United States Supreme Court has held confessions involuntary under circumstances similar to those present in this case. In *Lynum v. Illinois*, 372 U.S. 528, 534 (1963), the confession could not “be deemed the product of a rational intellect and a free will,” after “the police had told [the defendant] that state financial aid for her infant children would be cut off, and her children taken from her, if she did not ‘cooperate.’” It was irrelevant that in actuality the local prosecutor would make these determinations, not the law enforcement officers questioning her. Rather, the Supreme Court’s inquiry focused on the impact that those threats on the specific defendant, who had little previous experience with the criminal justice system and “had no reason not to believe that the police had

ample power to carry out their threats.” *Id.* This Court is bound to do the same here.

This Court’s analysis in the April 13 opinion overlooked or misconstrued the facts and law discussed above. Rehearing should be granted to allow for proper consideration the “totality of the circumstances,” which also include the characteristics of Sanchez-Torres that made him susceptible to the coercion applied by detectives.

B. The Court’s March 12 opinion overlooked or disregarded the specific characteristics of Sanchez-Torres that made him susceptible to coercion

The second variable in the calculus that this Court must consider is “the unique characteristics of Sanchez-Torres. *Connelly*, 479 U.S. at 163. These include anything relevant that may have impaired his will to resist the pressure placed upon him by law enforcement. Rehearing is necessary because this Court failed to consider the characteristics of the defendant contrary to Supreme Court precedent. It is particularly troubling that this Court overlooked and made no reference to the testimony of Dr. Julie Kessel and Dr. Stephen Bloomfield, the two expert witnesses tendered by Mr. Sanchez-Torres during the 3.851 proceeding. *Cf. Porter v.*

McCollum, 558 U.S. 30 (2009) (finding this Court’s IAC analysis unreasonable for failing to properly consider the postconviction testimony of expert witnesses).

Sanchez-Torres was a 19-year-old with limited experience with the criminal justice system at the time of the interrogation. This Court cannot ignore his young age, especially under a totality of the circumstances test that explicitly calls for consideration of the characteristics of the defendant. Because juveniles are “most susceptible to outside influence and outside pressures,” the already heightened coerce effects of custodial interrogation “become all the more acute.” *J.D.B.*, 564 U.S. at 269, 275 (internal quotations omitted). The age of 18 is not a bright line that suddenly turns juveniles into adults. Sanchez-Torres was still far from completing cognitive development. Additionally, Sanchez-Torres suffered from “severe cognitive problems” and an “underdeveloped brain” that delayed the development of his cognitive abilities such that he faced the exact same risks that the Supreme Court recognized in *J. D. B.*

Sanchez-Torres had an “underdeveloped brain” according to Dr. Kessel. (PCR 2551). Underdeveloped brain is a “phenomenon” in

which the development of an adolescent's "frontal cortex" is impaired because the development of the brain has been slowed:

[T]he part that is responsible for executive decisions, judgment, logic, reasoning, continues to develop well into someone's 20's. It's evident that he had impairments in those areas. And Attention Deficit Disorder and learning disability would certainly aggravate or delay somebody's brain development, in his case delay his brain development. So even though he was a late adolescent very young adult, he continued to have underdeveloped brain problem.

(PCR: 2551). Even if this Court wanted to treat Sanchez-Torres as an adult because he was 19, he still had the brain functioning and executive functioning of a juvenile at the time of the interrogation. This makes it particularly imperative to use the same protections that the Supreme Court has mandated for juveniles.

Sanchez-Torres has multiple "severe cognitive problems" that impaired his ability to withstand coercion. (PCR: 2579). Both experts testified that Mr. Sanchez-Torres has a learning disorder and difficulty with comprehension in arts and language and reading and verbal comprehension. (PCR: 2550). It is abundantly clear from Sanchez-Torres's school records in which he failed a number of classes and was "just barely passing at other times." (PCR: 2550). Sanchez-Torres was not able to graduate high school because he

failed the Florida Comprehensive Assessment Test (FCAT) multiple times within the year prior to the interrogation. (PCR: 1070).

Sanchez-Torres suffers from chronic cognitive problems. (PCR: 2551). He suffers from severe Attention Deficit Disorder (ADD). (PCR: 2549). ADD is “a disorder of executive dysfunction” which limits one’s ability to control “impulses, their judgment, their flexibility of thought, their decision-making capacity.” (PCR: 2549). ADD limits “working memory,” “which is the ability to hold information and use that information while you are deliberating.” (PCR: 2550). His learning disorder and ADD are “very significant impairments” and are “chronic aspects of his brain function.” (PCR: 2551). Sanchez-Torres suffers from a major depressive disorder. (PCR: 2560). This also severely restricted his cognitive abilities. Major depression is “associated with reduced cognitive function.” (PCR: 2561). The more severe the major depression, “people tend to respond more slowly, they don't internalize things in the same way, and they also don't care in the same way. They have less of a concern about themselves.” (PCR: 2561). These conditions heightened the already substantial risks of being a teenager facing overwhelming pressure from law enforcement.

Additionally, as a result of the severe trauma he faced during his childhood, Sanchez-Torres self-medicated daily with marijuana. Sanchez-Torres faced multiple periods in which he was forced to feed and take after himself, his father died when he was thirteen, he was kicked out of the house by his mother's abusive boyfriend and forced into homelessness for several months, he was subjected to severe bullying, and he experienced very significant sexual and gender identity issues. As a result of the impact of this, Sanchez-Torres used marijuana excessively to deal with his emotional and psychological distress and pain. This self-medication had an additional impact which impaired his "brain functioning," "executive functioning," and "functional brain development." (PCR: 2606, 2611). The use of marijuana "delays the development, the full mature development, of the adolescent brain" and Sanchez-Torres was using marijuana "daily" to self-medicate. (PCR: 2552).

All of these chronic and severe problems combined "very significantly impacted his ability to take in information, manipulate it in a meaningful way, and deliberate." (PCR: 2552-53). Because of the number of relevant diagnoses, which included ADD, major depressive disorder, the learning disability, the difficulty with

comprehension in arts and language and reading and verbal comprehension, marijuana abuse, all of these “aggravate[d] his executive function problem.” (PCR: 2569). As a result, Dr. Kessel testified that “I do not believe that Hector had the innate capacity to internalize the information that he was given” and that Mr. Sanchez-Torres “didn’t understand consequences of actions.” (PCR: 2570). And thus, he did not have “the capacity at that time to make the decisions in his own best interest.” (PCR: 2570).

Sanchez-Torres had developed a personality that was dependent and submissive, which made him especially susceptible to coercion. Sanchez-Torres faced a childhood filled with the trauma, which resulted in “a kid with a significant amount of anxiety.” He faced severe bullying. “Some people respond to being bullied by becoming frightened. And some people respond by becoming frightened and dependent on other people. And he responded in that way. He became frightened.” (PCR: 2554-55). Additionally, Sanchez-Torres “exhibited submissive” behavior. (PCR: 2610). As a result of this trauma, Sanchez-Torres “developed a personality that was characterized by anxiety, a sense of loss, a sense of needing others, needing others' approval, but also a sense of wanting to take care of

those that were important in his life.” (PCR: 2557). These personality traits and his dependency are factors that led Sanchez-Torres to feel he had no choice but to protect his mother, uncle, and sister from legal action.

These “unique characteristics” of Sanchez-Torres created the perfect stew of someone susceptible to coercion from law enforcement. He was 19, had little experience with law enforcement, and the development of his brain was delayed. He suffered from ADD and a learning disability, both of which severely hampered his executive functioning. He suffered from major depressive disorder, which further impaired his brain’s functioning. In order to self-medicate away the trauma he had faced, Mr. Sanchez-Torres was using marijuana daily which even further limited his cognitive abilities and delayed the development of his brain. On top of all of this, he was submissive and dependent, and particularly, dependent on his family. All of this resulted in a lack of capacity to internalize information and act in his own best interest. This Court’s May 13 opinion, while purporting to consider the totality of circumstances, considered none of this. Rehearing should be granted.

CONCLUSION

Therefore, counsel files this application for a second motion for rehearing and clarification on the Court's basis for denying Sanchez-Torres's claim of ineffective assistance of counsel based on trial counsel's failure to move to suppress his coerced confession.

Respectfully submitted this 27th day of May 2021.

s/ Karin L. Moore
KARIN L. MOORE
Assistant Capital Collateral Regional
Counsel North
Florida Bar Number 351652
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
Karin.moore@ccrc-north.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this day, May 27, 2021, via electronic service to Michael Kennett, Assistant Attorney General, at Michael.kennett@myfloridalegal.com and capapp@myfloridalegal.com, and by U. S. mail to Hector Sanchez-Torres, J40507, Union Correctional Institution, P. O. Box 1000,

Raiford, FL 32083.

/s/ Karin L. Moore
KARIN L. MOORE

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is submitted using Bookman
Old Style 14-point font pursuant to Florida Rules of Appellate
Procedure rule 9.045.

/s/ Karin L. Moore
KARIN L. MOORE