No. 128373

IN THE
SUPREME COURT OF ILLINOIS

DARRELL FAIR,	)	On Appeal From the Appellate
	)	Court of Illinois, First Judicial
Petitioner-Appellant,	)	District, No. 1-20-1072
	)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of Cook County,
PEOPLE OF THE STATE OF	)	Illinois, No. 98 CR 25742-01
ILLINOIS,	)	
	)	The Honorable
Respondent-Appellee.	)	PEGGY CHIAMPAS,
	)	Judge Presiding.

BRIEF OF *AMICUS CURIAE* ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION IN SUPPORT OF PETITIONER-APPELLANT

KWAME RAOUL
Attorney General
State of Illinois

ALEX HEMMER
Deputy Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-5526

Attorneys for *Amicus Curiae*
Illinois Torture Inquiry and
Review Commission

DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

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INTEREST OF AMICUS CURIAE

The Illinois Torture Inquiry and Relief Commission ("Commission") respectfully submits this brief *amicus curiae* in support of petitioner-appellant. The Commission is an independent entity established to investigate allegations of torture pursuant to the procedures set out in the Torture Inquiry and Relief Commission Act ("Act"), 775 ILCS 40/1 *et seq*. (2020). This case concerns the scope and nature of proceedings in a case referred by the Commission to a court, the standard a court uses to adjudicate referred torture claims, and the remedies available to an applicant in such a proceeding. Accordingly, the Commission has a substantial interest in the resolution of the case, which will govern the scope and nature of future post-referral proceedings.

The Act establishes a multistage procedure for the adjudication of certain post-conviction claims. To begin, the Act charges the Commission with investigating convicted defendants' claims that the confessions used to secure their convictions were coerced by police torture. 775 ILCS 40/35, 40 (2020). Upon deciding that "there is sufficient evidence of torture to merit judicial review," the Commission refers a claim to the Circuit Court of Cook County for consideration. *Id.* 40/45(c), 50(a). The Act then provides that the court "may receive proof by affidavits, depositions, oral testimony, or other evidence," and, if it "finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former

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proceedings" and provide supplemental relief "as may be necessary and proper." *Id.* 40/50(a).

In this case, petitioner-appellant Darrell Fair submitted a claim to the Commission, arguing that a statement he made to police that was introduced against him at trial was obtained by torture. Fair alleged, specifically, that he was tortured by being interrogated for 30 hours in a cell, by being deprived of food, water, and access to sleep and a bathroom, by being kicked by police and subjected to other interrogation techniques, and by being denied counsel. The Commission investigated and referred the case to the circuit court, which dismissed his claim after an evidentiary hearing, reasoning in substantial part that Fair had not met his initial burden of establishing that newly discovered evidence would have resulted in the suppression of the statement in question.

The appellate court affirmed on different grounds. App. 27-29 (¶¶ 101-106).[1] It credited Fair's allegation that he had been kicked by an unidentified police officer during his interrogation, and so held Fair had met his burden of identifying new material evidence. App. 29 (¶ 106). But it held that the State had sustained *its* burden of showing that Fair's statements were not the product of torture. *Id.* The appellate court twice noted Fair's arguments that he had been "coerced by . . . physical abuse, . . . promises of food, and his denial of counsel, sleep, and medication," App. 31 (¶ 109); *accord* App. 32 (¶ 111). It

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[1] Citations to "App." are to Fair's appendix; citations to "C__" are to the common law record; and citations to "R__" are to the report of proceedings.

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is not clear whether the appellate court credited the truth of those allegations, but it appeared to find them irrelevant as a legal matter, explaining that in its view they went principally to only one of two confessions — an initial oral one rather than a subsequent written one — that Fair purportedly made while he was detained. App. 31 (¶ 109). It reasoned that, in other cases, courts had found no torture based on similar allegations. App. 32 (¶ 111). And it rejected Fair's argument that the denial of access to counsel required suppression, explaining that the court lacked authority to grant relief on the ground that a confession stemmed from a *Miranda* violation, App. 33 (¶ 112), a position it reiterated in denying Fair's rehearing petition, App. 35-39 (¶¶ 117-26). This Court granted Fair's petition for leave to appeal.

The Commission expects that Fair will argue that: (a) the Act does not limit a court to adjudicating an applicant's "claim of torture," but instead authorizes a court to consider post-conviction claims that arise from the same nucleus of facts as his or her torture claim; (b) even if the Act limits a court to adjudicating a "claim of torture," the appellate court here applied an incorrect standard in adjudicating Fair's claim of torture; and (c) in either event, the courts below erred in denying Fair relief.

The Commission takes no position on the first or third issues, but it writes to explain why, in its view, the appellate court erred in failing to apply a totality-of-the-circumstances analysis in adjudicating Fair's claim of torture. Both Illinois courts and the Commission have consistently employed a totality-

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of-the-circumstances analysis in adjudicating claims that a confession was the result of coercion or torture, and, in the Commission's view, that analysis is the appropriate standard here. But the appellate court did not employ such an analysis. Instead, it appeared to dismiss the relevance of all the factors that Fair identified as supporting his torture claim, reasoning that they either: were not relevant to the question of whether the written confession was the product of torture; had been dismissed by other courts in other cases; or went only to other possible claims Fair might have. None of those bases can excuse the court's failure to ask whether, taken together, Fair's allegations show that his confessions were the product of torture.

Consistent with its limited statutory role, the Commission takes no position on whether Fair's claim of torture has merit and whether he is thus entitled to relief under the Act. But the appellate court's analysis was flawed, and Fair is entitled to an adjudication of his torture claim under the proper totality-of-the-circumstances standard. The Court should therefore either apply that standard in the first instance or remand for its correct application.

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ARGUMENT

I. A Court Adjudicating A "Claim Of Torture" In A Post-Referral Case Must Consider All Evidence In Determining Whether The Totality Of The Circumstances Establishes Torture.

Both Illinois courts and the Commission have consistently used a totality-of-the-circumstances analysis in adjudicating claims that a statement was either coerced or, in the Commission's case, the product of torture. That analysis provides the appropriate framework for courts considering claims of torture in post-referral cases.

This Court has for decades employed a totality-of-the-circumstances approach in adjudicating claims that a statement was coerced and thus should not have been admitted at trial. *See, e.g.*, *People v. Richardson*, 234 Ill. 2d 233, 253-54 (2009); *In re G.O.*, 191 Ill. 2d 37, 54 (2000); *People v. Gilliam*, 172 Ill. 2d 484, 500 (1996); *People v. Strickland*, 129 Ill. 2d 550, 556-58 (1989) (citing *Oregon v. Elstad*, 470 U.S. 298, 310 (1985)). Under that standard, a court should consider: the defendant's "age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises." *G.O.*, 191 Ill. 2d at 54. This Court has repeatedly emphasized that "no single factor is dispositive," *id.*; *accord Gilliam*, 172 Ill. 2d at 500, and so courts must consider all factors, together, in assessing whether a statement was coerced.

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The Commission has repeatedly and consistently used the totality-of-the-circumstances standard in adjudicating claims that a statement was the result of torture. It first adopted that standard in its opinion in *In re Claim of Willie Johnson*, TIRC Case No. 2014.196-J (May 17, 2017).[2] There, the Commission looked to precedent from this Court, federal courts, and even international jurisdictions in considering how to analyze whether a claimant's allegations constitute torture. *Id.* at 12-15. Commission rules define "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime." 20 Ill. Admin. Code § 2000.10. And in *Willie Johnson*, the Commission held that identifying whether allegations constitute "torture" under that standard requires "a fact-specific, unique inquiry" that "tak[es] into account the totality of the circumstances of each individual case." *Johnson*, No. 2014.196-J, at 15. *Willie Johnson* illustrates the Commission's method of analysis in these cases: The applicant alleged that police officers had made verbal threats to him that, considered alongside the fact that he was handcuffed, intoxicated, and sleep-deprived, rose to the level of torture. *Id.* The Commission agreed that, considering "the totality of the allegations" of the applicant's individual case, the threats could be viewed as torture, while

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[2] https://tirc.illinois.gov/content/dam/soi/en/web/tirc/documents/decisions/2017.5.17%20JOHNSON%20DETERMINATION%20-%20SIGNED%20and%20STAMPED.1.0.pdf.

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emphasizing that its decision did not announce "a blanket rule when it comes to verbal threats." *Id.*

The Commission has subsequently applied the totality-of-the-circumstances standard in a wide range of cases. *See, e.g.*, *In re Claim of Arthur Edmonson*, TIRC Case No. 2012-114-E (Apr. 13, 2022)[3]; *In re Claim of Jesus Morales*, TIRC Case No. 2013.149-M (Aug. 19, 2020)[4]; *In re Claim of Maurice Pledger*, TIRC Case No. 2011-080-P (Aug. 21, 2019).[5] As discussed, *supra* p. 5-6, that analysis is highly fact-dependent: The Commission generally considers all of the salient facts identified by a claimant in support of his or her torture claim and evaluates them in concert.

For instance, in *Arthur Edmonson*, the Commission considered whether a claim premised primarily on a single physical punch to the chest could constitute torture. *Edmonson*, No. 2012-114-E, at 18-20. The Commission acknowledged that the applicant's claim could be viewed as less severe than in other cases, *id.* at 2, but held that, considering the totality of circumstances — including, in that case, a 48-hour period of detention without sleep or access to a bathroom — it could not conclude that "such conduct could never invoke severe mental pain and suffering," *id.* at 20. By contrast, in *Maurice Pledger*,

[3] https://tirc.illinois.gov/content/dam/soi/en/web/tirc/documents/decisions/2022-04-13-determination-edmonson-stamped-2022-04-15.pdf.

[4] https://tirc.illinois.gov/content/dam/soi/en/web/tirc/documents/decisions/2020.8.19%20Morales%20Determination-SIGNED.1.0.pdf.

[5] https://tirc.illinois.gov/content/dam/soi/en/web/tirc/documents/decisions/PLEDGER%20Disposition%208.21.2019%20only-STAMPED.1.0.pdf.

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the Commission employed the totality standard to reject a claim of torture premised "almost exclusively" on "mental torture," *Pledger*, No. 2011.080-P, at 19-20: It explained that "torture might sometimes consist solely of mental pain and suffering without a physical component," *id.* at 20, but ultimately concluded that Pledger's claim lacked other "aggravating factors" sufficient to rise to the level of torture, and so declined to refer the claim to the circuit court, *id.* at 22-23.

Finally, the appellate court has adopted the same totality-of-the-circumstances standard in reviewing circuit court decisions that arise from Commission referrals. In *People v. Wilson*, 2019 IL App (1st) 181486, the appellate court considered an appeal from an order denying a Commission applicant relief after an evidentiary hearing. *Id.* at ¶ 1-2. The appellate court explained that, to determine whether a statement was voluntary, on the one hand, or the product of torture, on the other "courts consider the totality of [t]he circumstances, including the presence of *Miranda* warnings, the duration of questioning, and any physical or mental abuse." *Id.* at ¶ 63. In doing so, the appellate court expressly relied on this Court's decision in *Richardson*, which pre-dated the enactment of the Act and involved a circuit court's ruling on a pretrial motion to suppress evidence. *See id.* (citing *Richardson*, 234 Ill. 2d at 253-54). That is, the appellate court in *Wilson* treated the analysis of a torture claim essentially the same as it would a claim that a confession was elicited by

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coercion (albeit holding the claimant to a somewhat higher bar) — looking in each case to the same totality-of-the-circumstances standard.

This Court should follow the *Wilson* court's lead, adopting the same standard for assessing torture claims as it has for assessing coerced-confession claims — the totality-of-the-circumstances rule also used by the Commission itself. That standard, as the Commission explained in *Willie Johnson*, requires a reviewing court to conduct "a fact-specific, unique inquiry" that "tak[es] into account . . . the *totality* of the allegations," *Johnson*, No. 2014.196-J, at 15 (emphasis added), rather than focusing only on some factors — including, as in *Willie Johnson* and in *Arthur Edmonson*, allegations of physical abuse to the exclusion of other evidence.

II. The Appellate Court Did Not Employ A Totality-Of-The-Circumstances Analysis In Rejecting Fair's Torture Claim.

The appellate court stated that it would employ the totality-of-the-circumstances framework in resolving Fair's torture claim, App. 30 (¶ 108), but its analysis shows that it did not. And its proffered justifications for dismissing Fair's claim generally do not withstand scrutiny.

A. The appellate court failed to apply a totality-of-the-circumstances analysis.

The basis of Fair's torture claim, as the appellate court twice stated, is that his statements were "the result of being promised food, deprived of sleep and his asthma medication by police for 30 hours, denied his right to counsel, and being kicked by" a police officer, and so were the result of torture. App. 32

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(¶ 111); *see also* App. 31 (¶ 109) (similar). Despite acknowledging that Fair's torture claim was premised on these allegations, the appellate court went on to reject it without resolving whether the allegations, taken together, constituted torture. That failure alone warrants reversal.

As discussed, Fair's claim of torture required the court to determine whether the "totality of the circumstances," *G.O.*, 191 Ill. 2d at 54, constituted torture. Specifically, Fair alleged that he was arrested and placed in handcuffs; that, at the station, he was deprived of asthma medication, food, and sleep; that he was threatened with a gun by one police officer and kicked in the shins by a second; that these conditions persisted until, 30 hours later, he made an inculpatory oral statement; that a prosecutor entered the room and prepared a handwritten statement, which he refused to sign; and that he then invoked his *Miranda* rights, which the police officers and prosecutor ignored, instead continuing to question him. App. 6-8 (¶¶ 24-28). The court was required to consider these factual allegations together and determine whether, under a totality-of-the-circumstances inquiry, they constituted torture.

Despite acknowledging that obligation, App. 30 (¶ 108), the appellate court failed to conduct a totality-of-the-circumstances inquiry. Rather, in the relevant paragraphs of its opinion, the court employed a "'divide-and-conquer analysis,'" examining facts and arguments in isolation and dismissing each on an individual basis — a method "precluded under a totality of the

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circumstances standard." *People v. $174,980 U.S. Currency*, 2013 IL App (1st) 122480, ¶ 44 (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)). For instance, the court reasoned that Fair's allegation that the police officers had continued to question him after he asked for a lawyer was irrelevant because the court had no authority to award relief for *Miranda* violations. App. 33 (¶ 112); *see also* App. 35-39 (¶¶ 117-26) (same conclusion on denial of rehearing). And it held that the bulk of Fair's allegations — the physical abuse, deprivation of food, sleep, and medication, and the like — were likewise irrelevant because they went only to the voluntariness of Fair's initial *oral* statement, not his subsequent *written* statement. App. 31 (¶ 109).

These justifications are individually unpersuasive, as discussed further below. *Infra* pp. 12-19. But they also amount to an effort to avoid answering the basic question the appellate court was obligated to answer: whether Fair's allegations, taken together, constituted torture. That error alone warrants a remand for application of the correct standard.

B. The appellate court's proffered justifications do not withstand scrutiny.

In place of the totality-of-the-circumstances analysis required by this Court's precedents, the appellate court identified a range of reasons why, in its view, Fair's individual factual allegations or arguments did not support his torture claim. App. 31-34 (¶¶ 109-12). The appellate court's reasoning on these points generally does not withstand scrutiny, and many aspects of it

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would, if adopted by this Court, make it profoundly difficult for claimants to obtain relief under the Act in post-referral proceedings.

1. To start, the appellate court erred in rejecting outright — both in its initial opinion and on denying Fair's rehearing petition — the relevance of Fair's allegations that police officers had denied him access to counsel even after he requested an attorney. App. 33-34 (¶ 112); *accord* App. 34-39 (¶¶ 115-26). The appellate court stated that, because the Torture Act limits a court to "determining whether a confession or statement was the product of torture," Fair was, as a matter of law, "not entitled to relief under the Torture Act based on the denial of his repeated requests for counsel." App. 33-34 (¶ 112). The court reiterated that view in denying Fair's rehearing petition, stating that its task was limited to "determining whether a confession or statement was the product of torture," an analysis that did not require it to consider "whether the deprivation of counsel produced a statement or confession." App. 35 (¶ 116).

But even accepting the appellate court's starting premise that the Act limits a court to adjudicating a "claim of torture" (a question on which the Commission takes no position, *supra* p. TK), the appellate court nonetheless erred in failing to consider Fair's allegations that he was deprived of access to counsel in violation of his *Miranda* rights as relevant to Fair's torture claim itself. Illinois courts regularly consider whether police officers complied with *Miranda* safeguards in determining whether a statement was voluntary, on

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the one hand, or the result of coercion, on the other. *See, e.g.*, *Richardson*, 234 Ill. 2d at 253 (totality-of-the-circumstances factors considered by courts "include . . . the presence of *Miranda* warnings"). The appellate court has done the same in Commission cases. *See Wilson*, 2019 IL App (1st) 181486, ¶ 63 (same rule as *Richardson*); *see also People v. Gibson*, 2018 IL App (1st) 162177, ¶ 17 (torture claim rested in part on violation of *Miranda* rules).

That rule makes good sense: a police officer's failure to comply with *Miranda* safeguards (whether a failure to provide warnings, as in *Richardson*, or a failure to honor a request for counsel, as here) conveys to a suspect that he or she is outside the protection of the law, thus increasing the likelihood that the suspect will feel coerced into confession. And there is no reason to treat torture claims any differently than ordinary coercion claims, as the court in *Wilson* recognized. The appellate court thus erred in drawing an artificial distinction between the question of whether Fair's statements were "the product of torture," on the one hand, and whether they were the result of "the deprivation of counsel," on the other, *see* App. 35 (¶ 116); rather, the court should have recognized that the first inquiry subsumed the second. A court in such a circumstance, of course, need not find an actual *Miranda* violation in order to grant relief under the Act; it must only consider the evidence that such a violation occurred as part of the totality-of-the-circumstances analysis.

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To the extent the appellate court believed it could not consider Fair's *Miranda*-related allegations because it was "restricted to consideration of the allegedly torturous conduct triggering the referral to the circuit court," App. 35 (¶ 117), that, too, is mistaken on multiple levels. Most basically, Fair *did* tell the Commission that he invoked his *Miranda* rights and that police officers nonetheless continued to interrogate him, as the appellate court's own opinion reflects, *see* App. 7-8 (¶¶ 27-28), so these allegations *were* part of "the allegedly torturous conduct triggering the referral to the circuit court," App. 35 (¶ 117). And even if Fair had not made allegations of that sort in his Commission application, and the Commission had not relied on them, that would not matter. The Act expressly permits an applicant to build a new evidentiary record in the circuit court, authorizing the court to "receive proof by affidavits, depositions, oral testimony, [and] other evidence." 775 ILCS 40/50(a). That grant of authority would mean nothing if an applicant were limited to the argument and record that the Commission compiled, and for essentially that reason courts have repeatedly held that circuit courts are not so limited in their duties. *See, e.g.*, *People v. Johnson*, 2022 IL App (1st) 201371, ¶ 76 (circuit court must make independent decision as to whether torture occurred based on "evidence adduced at the evidentiary hearing"); *People v. Christian*, 2016 IL App (1st) 140030, ¶ 97 (defendant may present "additional evidence" in post-referral proceeding).

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2. The appellate court also erred on multiple levels in drawing a distinction between Fair's oral statement, allegedly made to police officers after over 30 hours of being deprived of food, sleep, and medication, and the written statement that a state prosecutor took shortly thereafter (allegedly documenting the oral statement), which Fair refused to sign. App. 31-32 (¶ 109). The court acknowledged the range of allegations that Fair made to support his torture claim (including "physical abuse," "promises of food," and the "denial of food, sleep and medication"), but it appeared to dismiss the relevance of those allegations altogether by adopting the circuit court's view that they went, at most, to a claim that Fair "was tortured into giving the *oral* statement, not the *written* statement." *Id.* (emphasis in original). And, the court reasoned, because the state prosecutor testified credibly at the hearing that Fair's "will" did not appear "overborne" at the precise moment at which the state prosecutor prepared the *written* statement, these allegations could not support Fair's torture claim as a whole. *Id.*

That reasoning is badly flawed. Most basically, a court cannot avoid its obligation to consider all the allegations advanced in support of a coercion or torture claim simply by crediting a police officer's or prosecutor's view that the applicant did not appear coerced. To the extent that the appellate court intended to rest its rejection of Fair's torture claim on the circuit court's conclusion that the state prosecutor testified credibly, that was error.

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Nor can the appellate court's decision be reasonably understood to rest on an attenuation holding — that is, a holding that, even if Fair *was* tortured, the state prosecutor's testimony showed that the effects of that torture had dissipated by the time the written statement was taken. As Fair observed in his petition for leave to appeal, Pet. 18-21, Illinois courts have for decades used a specific test for deciding whether the "taint of earlier coercive circumstances [has been] attenuated, . . . rendering a subsequent statement voluntary," *Richardson*, 234 Ill. 2d at 258; *see Strickland*, 129 Ill. 2d at 557. Specifically, courts look to the time that passes between the coercive circumstances and the subsequently made statement, whether there was a change in location, and whether there was a change in the identity of the interrogating officers. *Strickland*, 129 Ill. 2d at 557. But the appellate court did not employ any such test here; it rested instead primarily on the prosecutor's testimony that Fair did not appear to be suffering at the moment he saw him. Just as that judgment cannot substitute for a totality-of-the-circumstances analysis, it likewise cannot substitute for an attenuation analysis. And, in any event, it is highly implausible that, if Fair's *oral* statement was produced by torture, the *written* statement taken by the prosecutor would not have been, given that the written statement was taken almost immediately after the oral statement was made. *See* R478-79.

Finally, to the extent that the appellate court believed that the only salient torture allegation was Fair's claim that he had been kicked in the shin

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by a police officer — an allegation initially discredited by the circuit court, but credited by the appellate court, App. 29 (¶ 106) — and that the effects of that physical abuse had diminished by the time the written statement was taken, that reasoning, too, is flawed. The Commission's regulations define "torture" to include "any act by which severe pain or suffering, *whether physical or mental*, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime." 20 Ill. Admin. Code § 2000.10 (emphasis added). Fair alleged that he had been tortured in both ways, much like the applicants in *Willie Johnson* and *Arthur Edmonson*: he had been kicked in the shins by police officers and deprived of food, sleep, medication, and access to a bathroom. As in those Commission decisions, then, the question for the court was whether "the totality of the circumstances" of abuse — physical *and* mental alike — constituted torture. *G.O.*, 191 Ill. 2d at 54. To the extent the appellate court's decision rested on its tacit dismissal of Fair's argument that the alleged non-physical abuse contributed to the torture he experienced, *see, e.g.*, App. 29 (¶ 104) (characterizing Fair's claim as that "he was kicked and his resulting statements were coerced"), that contravenes not only the Commission's regulations but the basic principle, recognized by this Court for decades, that "physical [and] mental abuse by police" are factors relevant to the totality-of-the-circumstances inquiry, *G.O.*, 191 Ill. 2d at 54.

3. The appellate court finally erred by dismissing Fair's allegations on the ground that other courts in other cases had rejected torture or coercion

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claims premised in part on similar facts. *See* App. 32-33 (¶ 111). Specifically, the court reasoned that, although Fair alleged that he had been deprived of food, sleep, and medication while being detained for 30 hours, "confessions made after more than 30 hours have been found voluntary where there has been no evidence that the defendant's rights were violated." *Id.* (citing *People v. Dodds*, 190 Ill. App. 3d 1083, 1090-91 (1989)). It added that, although Fair's torture claim rested in part on his allegation that he had been deprived of sleep and food, at least one court had "found that any physical discomfort a defendant suffered from his failure to have adequate sleep, medication, or something to eat before giving an inculpatory statement[ ] was insufficient to show his will was overcome." *Id.* (citing *People v. Holloway*, 131 Ill. App. 3d 290, 307 (1985)).

But the appellate court's effort to dismiss Fair's claim by pointing to examples in which other courts have dismissed other coercion claims is not persuasive. As this Court has admonished, each case is different, and so "the question" whether a confession was freely made or was the result of coercion or torture "must be answered on the facts of each case." *People v. Melock*, 149 Ill. 2d 423, 448 (1992). The appellate court's own cited authorities make that clear, insofar as each could easily be distinguished from Fair's own case: In *Dodds*, for instance, although the suspect was detained for over 30 hours, the court observed that he was treated well by police officers during that time, "afforded long breaks" during which "[h]is requests for food, water, cigarettes

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and use of the lavatory were honored." *Dodds*, 190 Ill. App. 3d at 1091-92. Here, by contrast, Fair alleges that he was denied food, water, medication, and access to counsel during the relevant period. Similarly, in *Holloway*, the question was the effect of deprivation of food, sleep, or medication "for several hours," *Holloway*, 131 Ill. App. 3d at 308, not for over 30 hours and in connection with physical abuse, as Fair alleges occurred here. In the end, the appellate court's duty was to consider Fair's allegations on their own, asking whether, if credited, they would constitute torture. Because it did not undertake that analysis, Fair is entitled to an evaluation of his claim under the proper standard.

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CONCLUSION

For these reasons, the Court should either apply the totality-of-the-circumstances standard to Fair's claim in the first instance or remand to the appellate court for the correct application of that standard below.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

ALEX HEMMER
Deputy Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-5526

Attorneys for *Amicus Curiae* Illinois Torture and Relief Commission

DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

December 2, 2022

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Ill. Sup. Ct. R. 341(a) and (b). The length of the brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

/s/ David E. Neumeister
DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 2, 2022, I electronically filed the foregoing **Brief of *Amicus Curiae* Illinois Torture Inquiry and Relief Commission in Support of Petitioner-Appellant** with the Clerk of the Court for the Illinois Supreme Court, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Russell Ainsworth
russell@exonerationproject.org

Debra Loevy
debra@exonerationproject.org

David B. Owens
david@exonerationproject.org

Shameesha Pryor
paralegals@exonerationproject.org

Illinois Attorney General
eserve.criminalappeals@ilag.gov

Cook County State's Attorney
eserve.criminalappeals@cookcounty.gov

Joanna Escobar
joanna.escobar@ilag.gov

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ David E. Neumeister
DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)

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CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

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