No. 130470

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. ABDUL MALIK MUHAMMAD, Petitioner-Appellee.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0372 There on appeal from the Circuit Court of Cook County, Illinois, No. 00 CR 13572 The Honorable LAWRENCE E. FLOOD, LEROY K. MARTIN, and ERICA REDDICK, Judges Presiding.

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

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E-FILED
12/24/2024 8:57 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

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INTEREST OF *AMICUS CURIAE*

This appeal raises important issues concerning the jurisdiction of the Illinois Torture Inquiry and Relief Commission, an independent agency established to investigate allegations of torture in Cook County. In the Torture Inquiry and Relief Commission Act ("Act"), 775 ILCS 40/1 *et seq*. (2022), the General Assembly empowered the Commission to review "claim[s] of torture" in which the claimant alleges that "he was tortured into confessing to the crime for which [he] was convicted, and the tortured confession was used to obtain the conviction." *Id*. § 40/5(1). Over a decade ago, mindful of the Act's broad "remedial purpose," *People v. Fair*, 2024 IL 128373, ¶ 87, the Commission promulgated a regulation defining "tortured confession" to include "any incriminating statement, vocalization or gesture" induced by torture, 20 Ill. Admin. Code § 2000.10. It has since consistently relied on that definition, which the General Assembly has left undisturbed even while amending the Act in other respects.

The State now challenges the validity of this regulation, asserting that the Act permits relief only in a narrow set of cases in which the claimant made a comprehensive admission of guilt that addressed each element of the crime charged. The State further seeks to restrict the evidence the Commission may consider in evaluating torture claims and the ways in which claimants may structure their arguments before the agency. Because the Commission's interpretation of "tortured confession" is the most faithful reading of the Act

and the State's other arguments lack merit, the Commission writes to defend its regulation, its referral in this case, and its ability to consider all the evidence and argument before it.

The Act "establishes an extraordinary procedure to investigate and determine factual claims of torture." 775 ILCS 40/10 (2022). Individuals must first present their claims of torture to the Commission. *Id.* §§ 40/35, 40/40. The Commission then reviews the claim and, if it finds that "there is sufficient evidence of torture to merit judicial review," it refers the matter to the circuit court for further proceedings. *Id.* § 40/45(b).

This case arises from a torture claim submitted to the Commission by petitioner-appellee Abdul Muhammad. Muhammad asserted that several Chicago police officers had tortured him during an interrogation about a 2001 shooting, including by repeatedly striking him and denying him access to sufficient food or a restroom for four days. C446-47.[1] The State subsequently prosecuted Muhammad for murder in connection with the shooting and relied on inculpatory statements he purportedly made as a result of the torture — including that he had left Illinois following the shooting while aware that there was a warrant for his arrest — to secure a conviction. C442, 444, 453. Applying its regulatory definition of "tortured confession," the Commission concluded that Muhammad's claim fell within its jurisdiction. C452. And it

[1] Citations to "A__" are to the State's appendix, citations to "C__" are to the common law record, and citations to "R__" are to the report of proceedings.

found that Muhammad had presented "sufficient credible evidence of torture to merit judicial review," and so referred the matter to the circuit court. C456; *see* 775 ILCS 40/45(c) (2022). In so doing, the Commission noted that, for various fact-specific reasons, certain evidence that prosecutors may have committed a *Brady* violation during Muhammad's trial made his torture claim more plausible. C453-54; *see Brady v. Maryland*, 373 U.S. 83, 87 (1963). It also observed that, although Muhammad had at one point denied making any statement to police, that denial did not prevent him from advancing an alternative argument that, if he had made a statement, it was a tortured confession. C453 n.109.

In the circuit court, the State moved to dismiss the case on the ground that the referral exceeded the Commission's jurisdiction. It argued that the Act applies only to "confessions" in which the claimant admitted his guilt of the crime charged and addressed each element of the offense — which Muhammad did not do — and that the Commission's regulation is invalid because it defines "tortured confession" more expansively. C325, 330-32. It further contended that "[t]he Commission acted outside its authority by addressing an alleged *Brady* violation." C326. The circuit court agreed and dismissed the case. R719-26. It also rejected several motions by Muhammad to terminate the appointment of the special prosecutor representing the State. *E.g.*, A79.

The appellate court reversed. It reasoned that the Act's use of "confession" is ambiguous and that the Commission's regulation is a reasonable interpretation of the term that merits judicial deference. A23-24 ¶¶ 64-67. In so doing, it rejected the State's insistence on "a tortured confession that acknowledges guilt and nothing less" as "nonsensical" and inconsistent with the Act's purpose, since "a torturer seeks to obtain [not only comprehensive] confessions but [also] statements that can be used against a suspect." A23-24 ¶ 65. It also upheld the Commission's factual finding that the evidence of a potential *Brady* violation made Muhammad's torture claim more plausible. A26-27 ¶¶ 74-75. And it concluded that a conflict of interest required the special prosecutor's disqualification. A41-42 ¶ 123. This Court granted the State's petition for leave to appeal.

Before this Court, the State argues (1) that the Commission's regulatory definition of "tortured confession" is invalid, AT Br. 37-45; (2) that any *Brady* claim is not cognizable under the Act, *id.* at 45-47; (3) that Muhammad's having sometimes denied making any statement to police bars him from obtaining relief under the Act (an argument not raised before the lower courts), *id.* at 34-37; and (4) that the circuit court correctly denied Muhammad's motions to disqualify the special prosecutor, *id.* at 47-57.

The Commission takes no position on the fourth issue but writes to explain why the State's remaining arguments lack merit.[2] In particular, the Commission has a strong interest in defending the validity of its regulation defining "tortured confession." 20 Ill. Admin. Code § 2000.10. The Act's text and purpose, as well as the absurd results produced by the State's contrary interpretation, make clear that the agency's definition is the best reading of the statute. At minimum, as the appellate court held, it is a reasonable one entitled to deference. A23-24 ¶¶ 64-67. Notably, as discussed in greater detail below, *see infra* p. 14 n.6, the Commission has relied on the regulation over the past decade in referring a significant number of serious torture claims that would fall outside the State's narrow reading. *See, e.g.*, *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 1. Adopting that reading would invalidate those referrals, upend years of agency practice, and risk denying relief to a broad set of possible torture victims.

The Commission also has an interest in maintaining its ability to consider all relevant evidence and argument in evaluating torture claims — including evidence of independent constitutional violations that bear on an individual's torture claim and alternative arguments by claimants who have previously denied making any statements to police. To be clear, the

[2] The Commission also takes no position on whether Muhammad is ultimately entitled to relief. *See* 775 ILCS 40/45(c), 50(a) (2022) (the Commission's role is limited to evaluating the complaint and determining if there is evidence that warrants judicial review).

Commission agrees that it lacks the authority to refer cases to the circuit courts that advance standalone claims premised on *Brady* violations, or that contend only that police officers either fabricated confessions or tortured claimants without inducing confessions. But the Commission did none of those things here: It referred only a standard torture claim. The Commission therefore writes to explain why none of the State's arguments invalidate its referral in this case or justify restrictions on the evidence and argument the agency may consider.

In light of these interests, the Commission submits this amicus brief to urge affirmance of the portion of the appellate court's decision reversing the circuit court's dismissal of Muhammad's torture claim.

ARGUMENT

The Commission acted within its jurisdiction in referring Muhammad's torture claim to the circuit court.

None of the State's arguments challenging the Commission's regulations or its referral of this matter to the circuit court have merit. The State does not dispute that Muhammad's claim falls within the agency's longstanding regulatory definition of "tortured confession," and its collateral attack on that regulation fails because the Commission's interpretation is the best reading of the Act, or, at minimum, a reasonable one entitled to deference. The State's objection to the Commission's discussion of a possible *Brady* violation similarly misses the mark because the agency referenced the possible violation only for the limited purpose of evaluating Muhammad's torture claim and not as a standalone basis for referral or relief. Finally, the Commission reasonably understood Muhammad to argue both that he did not make any statements to police and, alternatively, that any such statement was a tortured confession, and the agency properly referred only this latter torture claim to the circuit court. The appellate court correctly reversed the dismissal of Muhammad's claim, and this Court should affirm that aspect of its decision.

A. Muhammad's claim concerns a "tortured confession."

The appellate court correctly rejected the State's argument that Muhammad's statements did not qualify as a "tortured confession" under the Act. A20-24 ¶¶ 60-67; *see* 775 ILCS 40/5(1) (2022). The Act gives the Commission jurisdiction over "claims of torture." *Id.* § 40/35(2). As relevant

here, the statute defines a "claim of torture" as "a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which [he] was convicted, and the tortured confession was used to obtain the conviction." *Id.* § 40/5(1).[3] A Commission regulation defines "tortured confession," in turn, to "include[] any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture." 20 Ill. Admin. Code § 2000.10. The State does not dispute that this definition covers Muhammad's statements. *See* AT Br. 37-45. Instead, it collaterally attacks the regulation, arguing that "confession," as used in the Act, refers only to a comprehensive admission of guilt that specifically acknowledges each of a crime's elements — a narrow category that would exclude Muhammad's statements. *See, e.g.*, AT Br. 38. Because the Commission's regulation is the most faithful interpretation of the Act — or, at minimum, a reasonable one entitled to deference — the Court should reject the State's contrary reading.

[3] There must also be "some credible evidence related to [the] allegations of torture," and the torture must have occurred "within a county of more than 3,000,000 inhabitants." *Id.* § 40/5(1).

1. The Commission's regulation correctly defines "tortured confession."

The appellate court properly adopted the Commission's definition of "tortured confession." A20-24 ¶¶ 60-67. "The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature." *Fair*, 2024 IL 128373, ¶ 61. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Id.* "A reviewing court may also consider the underlying purpose of the statute's enactment, the evils sought to be remedied, and the consequences of construing the statute in one manner versus another." *Id.* (quoting *People v. Garcia*, 241 Ill. 2d 416, 421 (2011)). "It is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results." *Garcia*, 241 Ill. 2d at 421. If a statute is ambiguous — that is, "capable of being understood by reasonably well-informed persons in two or more different ways" — then "[a] court will give substantial weight and deference to an interpretation . . . by the agency charged with administering and enforcing that statute." *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 46 (2002). Here, the Act's text and purpose, as well as the absurd consequences of the State's contrary interpretation, demonstrate that the Commission's definition of "tortured confession" is the best reading of the statute — or, at minimum, a reasonable one entitled to deference.

a. The plain meaning of "confess" and "confession" support the Commission's definition.

To start, the ordinary meaning of "confess" and "confession" support the Commission's definition. To "confess" means "[t]o disclose (something damaging or inconvenient to oneself)," *Confess*, *The American Heritage Dictionary of the English Language* (5th ed. 2018), and a "confession" is simply "[s]omething confessed," *Confession*, *The American Heritage Dictionary of the English Language*.[4] Since a claimant who makes an "incriminating statement, vocalization or gesture," 20 Ill. Admin. Code § 2000.10, has "disclose[d] . . . something damaging or inconvenient," *Confess*, *supra*, he has confessed and thus made a confession. Notwithstanding the more specialized definitions cited by the State, AT Br. 33, then, the regulation captures the ordinary meaning of "confession."

The Commission's interpretation is also consistent with the General Assembly's use of "confession" in the related context of pretrial motions to suppress. *Cf., e.g.*, *People v. McCarty*, 223 Ill. 2d 109, 133 (2006) ("Under the doctrine of *in pari materia*, two statutes dealing with the same subject will be considered with reference to one another to give them harmonious effect."). This Court recognized in *People v. Costa*, 38 Ill. 2d 178 (1967), that, as used in a statute allowing criminal defendants to move to suppress "any confession" before trial, 725 ILCS 5/114-11 (2022), "the word 'confession' must be read to

[4] *See also Confess*, *Webster's Third New International Dictionary* (2002) ("to tell of or make known (something private, hidden, or damaging to oneself)"); *Confession*, *Webster's Third New International Dictionary* ("the act of confessing : ADMISSION"); *Confession*, *Black's Law Dictionary* (12th ed. 2024) ("any avowal or acknowledgment of an inculpatory or sinful act").

include . . . inculpatory . . . statements," 38 Ill. 2d at 183. Particularly because both statutes provide remedies for wrongfully obtained confessions, this holding supports the Commission's conclusion that the Act incorporates a similarly broad definition of "tortured confession" that includes an "incriminating statement, vocalization or gesture." 20 Ill. Admin. Code § 2000.10.[5]

The cases cited by the State that construe the term "confession" more narrowly do not negate *Costa*. None arose in a context so closely related to the Act, and so none are as relevant to understanding its meaning. *See, e.g.*, *McCarty*, 223 Ill. 2d at 133. On the contrary, several involved specialized contexts that required a narrower definition of "confession." For example, both *People v. Harvey*, 2024 IL 129357, and *People v. Manske*, 399 Ill. 176 (1948), concerned the *corpus delicti* rule, under which a defendant's confession cannot be the only proof of the fact that a crime occurred. *Harvey*, 2024 IL 129357, ¶ 22; *Manske*, 399 Ill. at 184-85. Only the type of complete admission

[5] Tellingly, the State does not address *Costa*, even though the appellate court discussed it at length. *See* A18-21 ¶¶ 53-55, 60. In the appellate court, it argued that *Costa* was the one-off product of constitutional concerns, with this Court seeking to construe the statute to avoid any conflict with the Supreme Court's then-recent decision in *Miranda v. Arizona*, 384 U.S. 436 (1966). *See* A18-19 ¶¶ 53, 55. But a court may construe a statute to avoid constitutional problems only "where such construction is a reasonable alternative." *Anderson v. Schneider*, 68 Ill. 2d 165, 176 (1977). Thus, *Costa* establishes at minimum that one can reasonably read "confession" to include "inculpatory . . . statements." *Costa*, 38 Ill. 2d at 183. For all the other reasons discussed in this section, that is also the best reading of the term as used in the Act.

of guilt favored by the State could possibly implicate that doctrine, since prosecutors could not secure a conviction based solely on an incriminating statement that does not disclose all of the elements of a crime. Moreover, because the *corpus delicti* rule is a common law doctrine, neither case turned on the interpretation of a statute. *See Harvey*, 2024 IL 129357, ¶¶ 22-28; *Manske*, 399 Ill. at 184-85. Neither did *People v. Floyd*, 103 Ill. 2d 541 (1984), which concerned the interpretation of Illinois's pattern jury instructions. *See id.* at 547-49. At most, the decisions cited by the State establish that the General Assembly has *sometimes* used "confession" in a narrower sense; *Costa* proves that it does not *always* do so. So the State's cases do not show that the Commission's definition is inconsistent with the Act.

And whatever ambiguity the State's cited cases create, the Act's purpose eliminates. This Court has emphasized that the Act is "remedial in nature, and . . . must be broadly interpreted to further its purpose of establishing 'an extraordinary procedure to investigate and determine factual claims of torture.'" *Fair*, 2024 IL 128373, ¶ 81 (quoting 775 ILCS 40/10 (2022)). The Commission's definition follows this instruction by focusing on the torture's practical effect, and providing a remedy to individuals forced to make self-incriminating statements that prosecutors used against them at trial — regardless of the exact form those statements took. The State's approach, in contrast, would have the availability of relief turn on hypertechnical parsing of claimants' statements to determine whether they specifically addressed each

element of a crime, regardless of the statements' practical effects on the claimants' trials. That narrow understanding disserves the Act's broad purpose.

Indeed, the State's approach would predictably lead to "absurd, inconvenient, [and] unjust results." *Garcia*, 241 Ill. 2d at 421. As the appellate court explained, since "a torturer . . . seeks to obtain [not only comprehensive] confessions but [also] statements that can be used against a suspect, . . . it would be nonsensical for the Commission to consider only a tortured confession that acknowledges guilt and nothing less." A23-24 ¶ 65. For example, under the State's interpretation, if investigators had strong evidence of one element of a crime and so used torture to extract incriminating statements concerning only another element, the torture victim could never obtain relief under the Act, even though the victim's statements would be just as damaging as the comprehensive recitation of elements demanded by the State. Similarly, the Act could never provide relief for an individual induced by torture to disclaim a promising defense, such as a possible alibi. The State offers no reason to think that the General Assembly intended to bar relief under such circumstances.

These concerns are not merely hypothetical. The Commission has referred numerous matters to the circuit court involving statements that constitute "tortured confession[s]" under the regulation but that would not qualify under the State's more restrictive definition, despite having been

extremely prejudicial to claimants' defenses. *See, e.g.*, *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 1.[6] In *Gibson*, for example, the claimant, after allegedly suffering "two days of physical abuse," told police that he had been at the scene of a murder. *Id.* This statement, which did not admit guilt or acknowledge *any* element of a crime, falls well short of the State's exacting standard for a "confession," but — as the appellate court noted — was "the key piece of evidence in the State's case" and "the lynchpin of [the claimant's] conviction [for murder] in the eyes of the trial judge." *Id.* ¶¶ 1, 114. Notably, neither the circuit court nor the appellate court in *Gibson* questioned the Commission's jurisdiction to refer the matter; on the contrary, after the circuit court concluded that the claimant's torture allegation was not credible, the appellate court reversed and remanded for further proceedings. *Id.* ¶¶ 2, 142. But the State's narrow interpretation of "confession" would require dismissal in *Gibson* and cases like it — and, in so doing, flout the Act's "remedial purpose" and upend years of agency practice. *Fair*, 2024 IL 128373, ¶ 87. The Commission's regulation, in contrast, honors the Act's purpose and this Court's instruction to interpret it "broadly." *Id.* ¶ 81.

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[6] *See also In re Calvin Trice*, TIRC Claim No. 2014.151-T, at 2, 31-37 (June 23, 2023), https://tinyurl.com/2uw3z6s7; *In re Terrance Johnson*, TIRC Claim No. 2019.641-J, at 7-8, 16-21 (Nov. 18, 2022), https://tinyurl.com/388sfjvs; *In re Jessie Hatch*, TIRC Claim No. 2011.026-H, at 5, 17-20 (Feb. 21, 2020), https://tinyurl.com/yvxjpfp8; *In re Jaime Hauad*, TIRC Claim No. 2011.025-H, at 1, 17-23 (Nov. 16, 2017), https://tinyurl.com/yha8tpvd.

b. The Commission's definition is, at least, a reasonable one to which this Court should give deference.

For all these reasons, the Commission's definition of "tortured confession" is unambiguously correct. But even if the statute is ambiguous, the Commission's construction is, at minimum, a reasonable one, to which "[a] court will give substantial weight and deference." *Birkett*, 202 Ill. 2d at 46. Indeed, "a reasonable construction of an ambiguous statute by the agency charged with that statute's enforcement, if contemporaneous, consistent, long-continued, and in concurrence with legislative acquiescence, creates a presumption of correctness that is only slightly less persuasive than a judicial construction." *Id.*

The Commission's definition is entitled to this presumption. The regulation is "long-continued," "contemporaneous," and "consistent": the agency adopted it over a decade ago, shortly after the Act's enactment in 2009, *see* 38 Ill. Reg. 19,009, 19,011 (Sept. 19, 2014), and has consistently applied it since, including in cases where it produces a different result from the State's narrower view, *see, e.g.*, *In re Jaime Hauad*, TIRC Claim No. 2011.025-H, at 1, 17-18 (Nov. 16, 2017);[7] *see also supra* p. 14 n.6 (collecting decisions); *cf.* *Birkett*, 202 Ill. 2d at 53 (noting that a regulation that "ha[d] remained on the books continuously and unaltered" for 17 years merited deference). And the

[7] https://tinyurl.com/yha8tpvd.

General Assembly has acquiesced in the Commission's interpretation by leaving it "undisturbed" even while amending the Act — including the definition of "claim of torture" — in other respects. *Birkett*, 202 Ill. 2d at 53; *see* Pub. Act No. 99-688, § 5, 2016 Ill. Laws 2840, 2840-41 (amending 775 ILCS 40/5(1)). In particular, in 2016, the General Assembly modified the Act's definitional provision to remove a restriction that any claim of torture be based on misconduct by a specific group of police officers and to specify that the torture must have occurred in a county with over 3,000,000 residents. *See* Pub. Act No. 99-688, § 5. Those changes show that legislators deliberated over the Act's scope, yet cast no doubt on the Commission's definition of "tortured confession." The General Assembly's choice to let the agency interpretation stand thus provides "a clear indication that the [legislature] fully acquiesces in that construction." *Birkett*, 202 Ill. 2d at 53.

The Commission's definition therefore carries "a presumption of correctness." *Id.* at 46. Given this presumption, even if the Court concludes that the Act is ambiguous, it should defer to the Commission's interpretation and reject the State's contrary view.

2. The State's counterarguments are unpersuasive.

The State's remaining arguments against the Commission's interpretation lack merit.

First, 720 ILCS 5/12-7 (2022) — which makes it a felony to "knowingly inflict[] or threaten[] imminent bodily harm" "with intent to obtain a

confession, statement or information," *id.* § 5/12-7(a) — hinders rather than helps the State's cause. The State argues that this provision shows that the General Assembly recognizes a distinction between confessions and other statements. AT Br. 43. But the statute's reference to "a confession, statement or information" dates to at least 1961, *see* Criminal Code of 1961, § 12-7, 1961 Ill. Laws 1983, 2014, before this Court recognized a broader meaning of the term "confession" in *Costa*, *see* 38 Ill. 2d at 183. At that time, given the older case law cited by the State that adopted a narrower reading of the term, *see* AT Br. 38-39; *supra* pp. 10-12, it would have made sense for the General Assembly, out of an abundance of caution, to use more explicitly expansive language. After *Costa*, this belt-and-suspenders approach became unnecessary. Indeed, far from supporting the State's position, section 5/12-7 favors the Commission's interpretation. As the appellate court explained, "[i]t would be odd [if] a police officer [could] be prosecuted for obtaining 'information' by force from a suspect but a convict could not obtain relief . . . for a statement obtained by torture." A24 ¶ 66. The Commission's reading of the Act is thus more consistent with this provision.

The State's argument concerning Illinois's pattern jury instructions is likewise misplaced. The instructions previously distinguished between a "confession" and an "admission," but the committee responsible for them chose over 40 years ago to eliminate this distinction because the "line [between the two categories could] be difficult to draw." *People v. James*, 2017 IL App

(1st) 143391, ¶¶ 121-26. Far from showing that the two categories have well-defined, distinct meanings, as the State argues, AT Br. 44, the difficulty that even courts experienced in differentiating them only confirms that the ordinary meaning of "confession" includes inculpatory statements that fall outside the State's strict definition. Beyond that fact, the decision of a committee of this Court — and not of the General Assembly — nearly half a century ago to modify the instructions provides little insight into the Act's meaning.

In short, because the Commission's regulation captures the best — or, at minimum, a reasonable — interpretation of the Act, the regulation is valid, and the agency properly concluded that Muhammad's claim concerns a "tortured confession."

B. The State's other arguments lack merit.

The State makes two additional arguments against the validity of the Commission's referral. Both misunderstand the nature of the agency's action, and neither withstands scrutiny.

1. The Commission appropriately considered facts relevant to a potential *Brady* violation in evaluating Muhammad's torture claim.

Consistent with its statutory mandate, the Commission referred this matter to the circuit court after finding that Muhammad presented "sufficient credible evidence of torture to merit judicial review." C456; *see* 775 ILCS 40/45(c) (2022). In making that finding, the Commission considered evidence related to a possible *Brady* violation — specifically, evidence that prosecutors

did not inform Muhammad's trial attorney that Muhammed participated in at least one lineup with an eyewitness who failed to identify him as the shooter. C453. But it did so only as part of its analysis of whether the torture claim was factually supported, and not as a separate basis for referral or relief. C437, 453-55. Thus, the State's assertion that an independent *Brady* claim would be "beyond the scope of the circuit court's review of [a] claim of torture referred by the Commission," AT Br. 45, is correct but irrelevant: the Commission did not refer any distinct *Brady* claim, but simply considered "all relevant evidence" bearing on Muhammad's torture claim, 775 ILCS 40/45(a) (2022), as it was required to do, *see Fair*, 2024 IL 128373, ¶ 1 ("[A] court analyzing a claim of torture referred for review under the Act must consider the totality of the circumstances — including any allegations of constitutional violations that would not by themselves support a freestanding claim of torture under the Act.").

The Commission determined that the evidence of a potential *Brady* violation was factually relevant to Muhammad's torture claim in two ways. First, it bolstered Muhammad's credibility. As the Commission noted, one factor weighing against Muhammad was his apparent delay in raising his torture allegations. C454-55. Muhammad explained this delay in part by asserting that he had told his trial attorney about the alleged torture and that his attorney failed to investigate the matter. C437. The Commission reasoned that the evidence of a possible *Brady* violation supported this argument, as

Muhammad asserted that he had also alerted his attorney to that issue and that the attorney similarly failed to pursue it — an assertion that the evidence of a *Brady* violation made more credible. C437, 453. As the Commission put it: "[T]he fact that identification issues were likely reported to [Muhammad's] attorney and not addressed ma[de] the likelihood that the [torture] issues were reported and not addressed a greater possibility." C453. Second, the possible violation "reflect[ed] negatively on the state[] . . . and invit[ed] skepticism in regards to its conduct in other areas like coercion and torture." C454. This reasoning — which the appellate court upheld, A27 ¶ 75 — confirms that the Commission appropriately considered facts related to the potential *Brady* violation for the limited purpose of evaluating Muhammad's torture claim.

The State's arguments do not show otherwise. Its leading contention — that Muhammad cannot pursue a standalone *Brady* claim in this proceeding, AT Br. 45 — misconstrues the Commission's referral, which did not include any such claim. Unsurprisingly, given this misunderstanding, the State provides no reasoning and no authority showing that the Commission cannot consider facts that happen to be related to possible constitutional violations in deciding whether to refer a torture claim. Nor could it, since both the Act and *Fair* — not to mention common sense — require the Commission to consider all relevant facts in making referral decisions. *See* 775 ILCS 40/45(a) (2022); *Fair*, 2024 IL 128373, ¶¶ 1, 84, 88. And the State's fallback factual argument that any *Brady* violation did not itself constitute torture, AT Br. 46, attacks a

strawman: The Commission cited the evidence of a *Brady* violation for the inferential purposes discussed above, and not as direct evidence of torture.

In sum, the Commission properly considered all relevant evidence — including evidence of a potential *Brady* violation — in evaluating and referring Muhammad's torture claim.

2. The Commission reasonably understood Muhammad to argue both that he did not make any statements to police and, in the alternative, that any such statement was a tortured confession.

The State's argument that Muhammad's torture claim cannot proceed because he has sometimes denied making any statements to police, AT Br. 34-37, fails for at least two independent reasons.

First, the State forfeited this argument by failing to raise it in either the circuit court or the appellate court. *See, e.g.*, *1010 Lake Shore Ass'n v. Deutsche Bank Nat'l Tr. Co.*, 2015 IL 118372, ¶¶ 14-15 ("Issues not raised in either the trial court or the appellate court are forfeited."). This Court therefore need not consider it.

Second, in any event, the fact that Muhammad has sometimes denied making any statements to police did not bar the Commission from referring his alternative argument that any statement resulted from torture. As this Court has recognized in the context of postconviction proceedings, "[t]he law is settled that a defendant's assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed." *People v. Wrice*, 2012 IL 111860, ¶ 53; *see id.* ¶¶ 52-54. Here, the Commission

reasonably understood Muhammad — then proceeding *pro se* — to make such an alternative argument. C453 n.109; *cf., e.g.*, *People v. Hodges*, 234 Ill. 2d 1, 21 (2009) (noting requirement to construe *pro se* filings liberally). Although one of his letters to the Commission denied that he had made any statements to police, the record does not show similar denials in any of his other interactions with the agency, including multiple letters and an interview. C446-47. And the Commission confirmed from trial transcripts that the State had relied on statements attributed to Muhammad in securing his conviction. C442. As a result, the Commission reasonably understood Muhammad to argue both that he had not made any statement and, in the alternative, that if he had, it was a tortured confession. C453 n.109. The agency concluded that Muhammad had presented sufficient evidence in support of this latter claim to merit judicial review and referred that torture claim — not a fabricated-confession or excessive-force claim, *contra* AT Br. 35-36 — to the circuit court. C453-56, 453 n.10; *see* 775 ILCS 40/45(c) (2022).

The State offers no reason to question the Commission's approach. It cites no authority disallowing this form of alternative argument, nor could it. *See Wrice*, 2012 IL 111860, ¶¶ 52-54. And the agency's approach in this case is consistent with the past Commission dismissals cited by the State, AT Br. 36-37. In each instance the claimant either uniformly denied having made any statement (thus failing to advance any alternative argument), did not produce evidence that any purported statement was used against him, or both. *See,*

e.g., *In re Willie Hampton*, TIRC Claim No. 2013.141-H, at 1-2 (May 17, 2017) (noting that claimant denied making any statement and that trial transcripts showed that prosecution had not introduced any purported statements).[8] At bottom, the State asserts that an individual who has ever denied making statements in response to torture cannot prevail on a torture claim related to those statements. That sweeping view is incompatible not only with *Wrice* but also with the Act's broad "remedial purpose." *Fair*, 2024 IL 128373, ¶ 87. This Court should reject it.

[8] https://tinyurl.com/293r68cb.

CONCLUSION

For these reasons, the Commission respectfully requests that the Court affirm the appellate court's reversal of the circuit court's order dismissing this case.

Respectfully submitted,

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December 13, 2024

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 24 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 13, 2024, I electronically filed the foregoing Brief of *Amicus Curiae* of Illinois Torture Inquiry and Relief Commission in Support of Petitioner-Appellant with the Clerk of the Supreme Court of Illinois, 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.

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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.

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