

**THE COURT SHOULD GRANT THE MOTION TO SUPPRESS CO-DEFENDANT'S
STATEMENTS AS A VIOLATION OF THE
DUE PROCESS CLAUSE.**

A. Defendant Has Standing to Challenge the Coercively Obtained Statements of Others as a Violation of Due Process.

“In general, [a person] does not have standing to challenge a violation of [another person’s] rights; however, illegally obtained confessions may be less reliable than voluntary ones, and thus using a coerced confession at another's trial can violate due process.” *Douglas v. Woodford*, 316 F.3d 1079, 1092 (9th Cir.2003); *see also Moore v. Czerniak*, 574 F.3d 1092, 1156 (2009) (noting that co-defendant’s statements obtained through a coercive interrogation should not have been used against defendant at his trial); *See also, United States ex rel. Cunningham v. DeRobertis*, 719 F.2d 892,895-896 (7th Cir. 1983) (use of another's coerced confession may rise to violation of defendant's right to fair trial); *See also United States v. Merkt*, 764 F.2d 266, 273-274 (5th Cir. 1985)(“A defendant may assert her own [F]ifth [A]mendment right to a fair trial as a valid objection to the introduction of statements extracted from a non- defendant by coercion or other inquisitional tactics.”). Confessions wrung out of their makers may be less reliable than voluntary confessions, so that using one person's coerced confession at another's trial violates his rights under the due process clause. *Clanton v. Cooper*, 129 F.3d 1147, 1157-58 (10th Cir. 1997) (internal quotations and citations omitted).

In *Clanton v. Cooper*, 129 F.3d 1147 (10 Cir. 1997), the Tenth Circuit explains why that Circuit – and other circuits like the Ninth Circuit Court Appeals – allow for standing relating to coerced confessions of a third person. The Court in *Clanton* explains as follows:

SuppressStatementsofCoDefendant[2012]

There are two types of constitutional protections that invoke exclusionary rules. In the first, the exclusion of unconstitutionally obtained evidence is designed to protect the enjoyment of constitutional rights themselves. Thus, for example, the Fourth Amendment protects the right to privacy by prohibiting officers from bursting into a home [. . .] and seizing evidence without a warrant; if the officers do so, the resulting evidence, though accurate, will be suppressed to discourage such unconstitutional actions. In this category, only the victims of the unconstitutional conduct may challenge the officer's actions, because only their rights have been violated.

In the second category, a constitutional violation may assist officers in gathering evidence, but the violation has both offended the Constitution and rendered evidence unreliable. A coerced confession fits into this category.

[. . .]

Consequently, because the evidence is unreliable and its use offends the Constitution, a person may challenge the government's use against him or her of a coerced confession given by another person.

Id. at 1157-58.; *See also Douglas v. Woodford*, 316 F.3d 1079, 1092 (9th Cir. 2003) (agreeing with *Clanton* that coerced confession at another's trial can violate due process).

The Fourteenth Amendment's guarantee of fundamental fairness is violated "when a coerced confession is used as a means of obtaining a verdict of guilt." *Lisenba v. California*, 314 U.S. 219, 236 (1942) ("denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice"). Using the confession against a criminal defendant violates these constitutional protections even if other evidence establishes guilt or corroborates the confession. *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960). A defendant is deprived of due process of law if his conviction is founded, even in part, upon an involuntary confession. *Jackson v. Denno*, 378 U.S. 368, 384 (1964).