No. 10-680

In the Supreme Court of the United States

CAROL HOWES,

Petitioner,

v.

RANDALL FIELDS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE OF OHIO, ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, DELAWARE, FLORIDA, GUAM, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW MEXICO, NORTH DAKOTA, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WISCONSIN, AND WYOMING IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether this Court's clearly established precedent under 28 U.S.C. § 2254 holds that a prisoner is always "in custody" for purposes of *Miranda* any time that prisoner is isolated from the general prison population and questioned about conduct occurring outside the prison regardless of the surrounding circumstances.

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STATEMENT OF AMICI INTEREST

The amici States bear primary responsibility for criminal investigations in this country and therefore have a special interest in *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The States accept the decision's original design: *Miranda* warnings must be issued in any situation where the questioner "exerts upon [the] detained person pressures that sufficiently impair his exercise of his privilege against self-incrimination." *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). But the States oppose any expansion of the *Miranda* doctrine beyond that context, especially in the prison setting.

For this reason, the States urge the Court to reject the Sixth Circuit's definition of the *Miranda* custody rule for prison questioning. The court's framework has no foundation in precedent; it creates artificial and unworkable distinctions in *Miranda* jurisprudence; and it affords greater rights to prisoners than to other citizens.

SUMMARY OF ARGUMENT

All parties agree on the broad contours of *Miranda*: A suspect "taken into custody or otherwise deprived of his freedom of action in any significant way" must receive warnings before he is questioned. 384 U.S. at 444. The dispute here turns on the rule's adaptation to the prison environment. By definition, an inmate is "in custody" and "deprived of his freedom" at all times.

The majority view, held by five circuits, is that an inmate is "in custody" (and entitled to *Miranda* warnings) only when the questioner applies additional restraints or coercive pressures beyond those inherent in everyday prison life. The Sixth

Circuit, by contrast, uses a categorical rule: An inmate is "in custody" and entitled to warnings whenever he is questioned away from the general prison population.

The Sixth Circuit's test is flawed for three reasons. First, it mistakenly rests on this Court's decisions in *Mathis v. United States*, 391 U.S. 1 (1968), and *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010). But neither case addressed the concept of "*Miranda* custody" in the prison setting.

Second, the test dramatically expands the *Miranda* protections available to prisoners. For the incarcerated population, "custody" no longer turns on well-worn factors applicable to average citizens, like whether the police applied handcuffs, informed the suspect that he could end the interview, or threatened criminal prosecution.

Third, the Sixth Circuit's rigid focus on only the location of the interview perverts the *Miranda* inquiry. It contradicts this Court's directive to "examine all of the circumstances surrounding the interrogation," *Stansbury v. California*, 511 U.S. 318, 322 (1994), and tethers the definition of "custody" to one (often inconsequential) fact.

At least five other circuits would have examined the totality of circumstances surrounding Fields's interview and concluded that he was not "in custody." The Court should endorse that approach as a proper statement of *Miranda* jurisprudence and reverse the Sixth Circuit's judgment below.

ARGUMENT

A. The Court has never defined "*Miranda* custody" in the prison setting.

Under *Miranda*, a suspect must be advised of his right to remain silent and his right to an attorney whenever he "is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and . . . subjected to questioning." 384 U.S. at 478. This requirement is triggered only when both conditions—"custody" and "interrogation"—exist simultaneously. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980).

In most instances, the definition of "custody" is straightforward. To "determin[e] . . . whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (citation omitted). If "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave," the suspect is in custody and *Miranda* warnings must be issued before any interrogation. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

The "in custody" rubric, however, does not readily translate to prisons, because the bare fact of incarceration means that an inmate's "freedom of movement" is always restrained in a certain sense. But this type of custody, which is "lawful[ly] imposed upon [the inmate's] conviction of a crime," "does not create the coercive pressures identified in *Miranda*." *Shatzer*, 130 S. Ct. at 1224.

The ultimate question then is how to identify "*Miranda* custody" in the specialized setting of a prison. Faced with this issue, lower courts have articulated alternative frameworks for evaluating "*Miranda* custody" in the prison environment.

For its part, the Sixth Circuit "formalize[d] a bright line test" after examining this Court's decisions in *Mathis* and *Shatzer*. Pet. App. 18a The court announced that "[a] *Miranda* warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Pet. App. 19a

The Sixth Circuit's reading of both cases is flawed.

1. The *Mathis* decision did not address the custody issue.

In *Mathis*, an IRS agent failed to give *Miranda* warnings to a state prisoner before questioning him about his tax returns. 391 U.S. at 2-3. The prisoner sought to suppress his statements in a later prosecution. The federal government claimed that no violation occurred because the prisoner "had not been put in jail by the officers questioning him, but was there for an entirely separate offense." *Id.* at 4. This Court rejected that distinction: "[N]othing in the *Miranda* opinion . . . calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Id.* at 4-5.

The *Mathis* Court, however, did nothing more than that. It undertook no analysis of *Miranda*'s custody prong. Such an "unexplained silence[] . . . "lack[s] precedential weight." *Plaut v. Spendthrift*

Farm, Inc., 514 U.S. 211, 232 n.6 (1995); accord *Hagans v. Lavine,* 415 U.S. 528, 533 n.5 (1974) ("[W]hen questions . . . have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the . . . issue before us.").

The Sixth Circuit nevertheless extrapolated a broad definition of "custody" from *Mathis*'s terse opinion: An inmate is in *Miranda* custody whenever he is "remove[d] from the general prison population and interrogate[d] . . . regarding criminal conduct." Pet. App. 13a.

That interpretation of *Mathis* is implausible for three reasons. First, this Court had not formulated a clear definition of *Miranda* custody as of 1968.[1] Its first attempt to do so occurred nearly a decade later. In *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam), the Court suggested that "custody" requires a "formal arrest or restraint on freedom of movement." It eventually ensconced that formulation as "the ultimate inquiry" for "determin[ing] . . . whether a suspect is 'in custody,'" first in *Beheler*, 463 U.S. at 1125, and later in *Thomson*, 516 U.S. at 112. These three cases make no mention of *Mathis* when discussing the concept of *Miranda* custody, confirming that *Mathis* never grappled with the issue.

Second, the federal government conceded that the *Mathis* prisoner was in custody. The government instead argued that his custody was irrelevant under *Miranda* because it was not "connect[ed] with the

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[1] In *Miranda*, no one disputed the suspect's custodial status. Police had formally arrested him. See 384 U.S. at 491.

very case under investigation" by the IRS agent. *Mathis*, 391 U.S. at 4. Although the Court rejected this proposed exception to the *Miranda* custody requirement, *id.*, it did not otherwise elaborate on the contours of custody in the prison context. And given the federal government's concession, the Court had no need to embark on such an endeavor. Cf. *United States v. Raines*, 362 U.S. 17, 21 (1960) (recognizing the Court's practice "never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied") (citation omitted). In other words, the *Mathis* decision was one of negation: The Court rejected the federal government's argument, but did nothing more.

Third, the record in *Mathis* contains no indication that the prisoner was ever isolated from the general population. The trial transcript reveals only that the IRS agent interviewed the defendant at a state prison. See Joint Appendix at 30-31, *Mathis v. United States*, 391 U.S. 1 (1968) (No. 726) (Testimony of J. Lawless). The parties failed to present any evidence or testimony about the interview's location (a cellblock, a visitor's room, or a common area), the defendant's condition (was he handcuffed or physically confined), or his status (was he removed from the general population).

The Sixth Circuit's reading of *Mathis* is therefore inconsistent with the factual record. Because the *Mathis* Court had no knowledge of the prisoner's status or location, it had no occasion (or even ability) to explore the custody component of *Miranda*, much less define it as "isolat[ion] from the general prison population." Pet. App. 10a.

Simply put, the Sixth Circuit over-interpreted *Mathis*. The *Mathis* Court clearly understood the defendant to be in *Miranda* custody, but only because the federal government did not assert otherwise. Given the thin record and the undeveloped status of *Miranda* jurisprudence at the time, nothing more can be gleaned from the *Mathis* opinion.

2. The *Shatzer* decision did not define *Miranda* custody in the prison setting.

The Sixth Circuit's categorical rule finds no support in *Shatzer* either. In that case, a detective interviewed an incarcerated suspect about child-sex-abuse allegations. The suspect invoked his right to an attorney and the detective terminated the encounter. More than two years later, a second detective re-interviewed the suspect. After waiving his *Miranda* rights, the suspect made incriminating statements. See *Shatzer*, 130 S. Ct. at 1217-18.

The prosecutor then filed criminal charges, and the suspect asserted a violation of *Edwards v. Arizona*, 451 U.S. 477 (1981), which bars police from reinitiating contact after an individual invokes his right to counsel. The Court rejected the defendant's *Edwards* claim, holding that the break in custody vitiated the *Edwards* prohibition. *Id*. at 1222.

To even invoke *Edwards*, however, the *Shatzer* suspect had to be "in[] custody" during the two interviews. *Id*. at 1220. The Court assumed that he was, but not through any independent analysis. Rather, it observed, "[n]o one question[ed] that

Shatzer was in custody for *Miranda* purposes during the [two] interviews."[2] *Id*. at 1224.

The Sixth Circuit seized on that comment: "The Supreme Court's unambiguous conclusion that the *Shatzer* defendant was in *Miranda* custody on both occasions serves to bolster our determination." Pet. App. 18a. The Sixth Circuit assumed that the *Shatzer* Court "expressed no doubt" that a prisoner is in *Miranda* custody whenever he is "taken from his cell to an isolated area . . . for the purpose of interrogation." *Id*.

In so concluding, the Sixth Circuit attached undue significance to a single sentence in the *Shatzer* decision. As Judge McKeague observed below, "the fact that no one questioned whether Shatzer was in custody[] does not mean (or clearly establish) that anytime an inmate is removed from the general prison population and interrogated he is 'in custody' for *Miranda* purposes." Pet. App. 24a (McKeague, J., concurring). Instead, it means only that this Court granted certiorari to decide a particular legal issue—whether a "break in custody" extinguishes a suspect's earlier *Edwards* invocation. Although the parties and the Court "assum[ed] without deciding the validity of [an] antecedent proposition[]"—that Shatzer was in *Miranda* custody during the two interviews—that "assumption[] . . . [is] not binding in future cases." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 272 (1990).

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[2] In *Shatzer*, the Court also made clear that it "ha[d] never decided whether incarceration constitutes custody for *Miranda* purposes, and ha[d] indeed explicitly declined to address the issue." 130 S. Ct. at 1224.

Furthermore, the Sixth Circuit ignored other portions of the *Shatzer* decision. In a footnote, the Court coined the term "interrogative custody" to describe a scenario where a prisoner's questioning "is assuredly dependent upon his interrogators"—meaning, the suspect cannot terminate the interview at his own volition. 130 S. Ct. at 1225 n.8. This footnote, which comes closest to offering an authoritative definition of *Miranda* custody in the prison setting, substantiates the State of Michigan's position here. Detectives informed Fields that he was free to end the interview and return to his cell, see Pet. App. 70a-71a, 89a-90a, 124a-125a, 135a, and Fields understood that option, see Pet. App. 92a-93a. Because the duration of Fields's interview was not dependent on his interrogators, he was not in custody.

Finally, *Shatzer* made clear that "restraint on freedom of movement" is "only a necessary and not a sufficient condition for *Miranda* custody." 130 S. Ct. 1224. The detention must also "create the coercive pressures identified in *Miranda*," *id.*—namely, "pressures that sufficiently impair [a suspect's] free exercise of his privilege against self-incrimination." *Berkemer*, 468 U.S. at 437.

The Sixth Circuit cited no evidence that an inmate's isolation from the general population, in and of itself, exerts such pressures. After all, prison officials segregate inmates for all sorts of reasons—emergencies, medical needs, security, administrative necessities, and the like. Periodic removal from the general population is a fact of life for most inmates

and, therefore, does not itself generate the same type of coercive pressures at issue in *Miranda*.[3]

Justice Souter, sitting by designation on the First Circuit, recently recognized this principle of *Shatzer*. He concluded that a prisoner is not in *Miranda* custody "so long as he is not threatened with harsher confinement than normal until he talks, he knows that the worst that can happen to him will be his return to prison routine, and that he will be back on the street (in most cases) whether he answers questions or refuses." *United States v. Ellison*, 632 F.3d 727, 729 (1st Cir. 2010). Thus, the First Circuit held that the *Ellison* defendant, although interrogated by a police detective in isolation, was not in custody; he "was not restrained," he understood "that he did not have to answer any questions," and "he could go from the library at any time." *Id.* at 730.

The same holds true here. Detectives interviewed Fields in a conference room, they did not restrain him, and they informed him that he could terminate the interview and return to the cellblock. Although Fields was isolated from the general population, "nothing in th[at] fact . . . would be likely to create the atmosphere of coercion subject to *Miranda* concern." *Id.*

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[3] Isolation from the general population may even *lessen* the coercive pressures on the inmate. If officials instead conduct their questioning within plain view of the general population, other prisoners may finger the inmate as a jailhouse informant. Perceiving a possible threat to his safety, the inmate may feel dependent on officials for protection and, thus, more compelled to answer questions.

At bottom, *Mathis* and *Shatzer* "explicitly declined to address the issue of" whether the questioning of an "incarcerat[ed] [suspect] constitutes custody for *Miranda* purposes." *Shatzer*, 130 S. Ct. 1224. Accordingly, the Sixth Circuit's reliance on those cases is misplaced and that court's categorical test for *Miranda* custody is its own novel invention.

B. The Sixth Circuit's bright-line custody test is misguided.

The unsettled nature of the law resolves this case. Because the Court has never "clarif[ied] what constitutes 'custody' for *Miranda* purposes in the prison setting," *Bradley v. Ohio*, 497 U.S. 1011, 1015 (1990) (Marshall, J., dissenting), it cannot be said that the Michigan state court's decision was "contrary to" or "an unreasonable application of" clearly established federal law, 28 U.S.C. § 2254(d)(1); see also *Carey v. Musladin*, 549 U.S. 70, 77 (2006).

But in announcing a new test for *Miranda* custody, the Sixth Circuit not only exceeded its limited habeas authority, it also created an impractical and incoherent rule for lower courts to apply.

1. The Sixth Circuit's test affords greater protections to prisoners than other citizens.

The Sixth Circuit's custody test affords prisoners significantly more *Miranda* protection than ordinary citizens.

The Sixth Circuit emphasized that its "bright line approach" obviates the need for "fact-specific inquiries by lower courts into the precise circumstances of prison interrogations." Pet. App. 20a. Of particular note, whether or not the prisoner was "told he could stop the interrogation" is irrelevant to the court's analysis. Pet. App. 18a.

The *Miranda* inquiry differs significantly for non-imprisoned individuals. That "a person is told repeatedly that he is free to terminate an interview is powerful evidence that a reasonable person would have understood that he was free to terminate the interview." *United States v. Czichray*, 378 F.3d 822, 826 (8th Cir. 2004). Advising the suspect "that [he] may terminate the interview at will" is therefore "the most obvious and effective means of demonstrating that a suspect has not been taken into custody" under *Miranda*. *Id.* (citation omitted)). If police advise a suspect that he is free to terminate the interview, the circuit courts "generally . . . conclu[de] that the defendant is *not* in custody." *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006); accord *United States v. Hargrove*, 625 F.3d 170, 180 (4th Cir. 2010); *Locke v. Cattell*, 476 F.3d 46, 53-54 (1st Cir. 2007); *United States v. Collins*, 972 F.2d 1385, 1405 (5th Cir. 1992).

This Court has never suggested that *Miranda* erects a larger shield for prisoners. Yet the Sixth Circuit's custody rule here does just that. Officers informed Fields that he was free to terminate the interview. See Pet. App. 70a-71a, 89a-90a, 124a-125a, 135a. Had the questioning occurred at a stationhouse, these advisements would be an "important factor" in the Sixth Circuit's custody

inquiry. *United States v. Salvo*, 133 F.3d 943, 951 (6th Cir. 1998). But because Fields was incarcerated, the advisements had no bearing on the court's analysis.[4] Pet. App. 18a.

2. The Sixth Circuit's test artificially distinguishes between prison conduct and outside conduct.

The Sixth Circuit's custody test is anomalous in a second respect: The court constrained its bright-line custody rule only to "interrogat[ions] about conduct occurring *outside of the prison*." Pet. App. 19a. (emphasis added). It did so for a reason—to avoid conflict with other circuit decisions applying *Miranda* to prison misconduct investigations. At its core, however, the Sixth Circuit's inside-outside distinction is artificial and illusory.

After *Mathis*, many lower courts concluded that a prisoner is not automatically "in custody" when interrogated about conduct occurring inside the prison. The Ninth Circuit led the way. In *Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978), a guard questioned a prisoner in a small library area about a suspicious matchbook. *Id.* at 427. The prisoner confessed that it contained marijuana. At trial, however, he argued that he was entitled to *Miranda* warnings because his inability to "leave the

[4] Officers also did not handcuff or restrain Fields at the interview. See Pet. App. 71a. In assessing custody under *Miranda*, courts generally consider whether the suspect was handcuffed. See, e.g., *New York v. Quarles*, 467 U.S. 649, 655 (1984). The Sixth Circuit, however, deems that fact irrelevant if the suspect is incarcerated. Pet. App. 18a.

prison freely" meant that he was "in custody." *Id.* at 428.

The Ninth Circuit rejected the claim: "When prison questioning is at issue . . . th[e] 'free to leave' standard ceases to be a useful tool in determining the necessity of *Miranda* warnings." *Id.* The court adopted an alternative formulation: *Miranda* custody in prison occurs only when "a change in the surroundings of the prisoner . . . results in an added imposition on his freedom of movement." *Id.* This inquiry turns on "the language used to summon the individual, the physical surroundings of the interrogation, the extent to which he is confronted with evidence of his guilt, and the additional pressure exerted to detain him." *Id.*

Other circuits endorsed the *Cervantes* approach. See, e.g., *Garcia v. Singletary*, 13 F.3d 1487, 1492 (11th Cir. 1994); *United States v. Conley*, 779 F.2d 970, 973 (4th Cir. 1985); *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984). And they did so not just for "on-the-scene" inquiries, but for all questioning about prison misconduct. In *United States v. Cooper*, 800 F.2d 412, 415 (4th Cir. 1986), for instance, the Fourth Circuit employed the *Cervantes* factors to determine whether an inmate was "in custody" when a correctional officer questioned him about a ten-day-old stabbing incident. Likewise, in *United States v. Chamberlain*, 163 F.3d 499, 502-03 (8th Cir. 1998), the Eighth Circuit performed a totality inquiry to assess whether a prisoner was "in custody" when investigators confronted him about child pornography stored on his prison work computer.

The Sixth Circuit took no issue with those decisions. Nor could it. The court had previously endorsed the *Cervantes* inquiry, albeit in dicta, to assess *Miranda* custody. See *United States v. Ozuna*, 170 F.3d 654, 658 n.3 (6th Cir. 1999); *United States v. Cofield*, No. 91-5957, 1992 U.S. App. Lexis 8284, at *6-7 (6th Cir. Apr. 17, 1992); accord *Simpson v. Jackson* 615 F.3d 421, 440 n.7 (6th Cir. 2010) ("We noted the *Cervantes* reasoning with approval in dicta.").

Instead, the Sixth Circuit endorsed two different tests: When assessing *Miranda* custody, courts in the circuit are free to employ a *Cervantes* totality-of-the-circumstances inquiry when authorities question an inmate about "an offense committed in the jail itself." Pet. App. 12a. But they must use the categorical custody test when the interview implicates "conduct that took place outside the jail or prison." Pet. App. 13a.

The Sixth Circuit's attempt to straddle the fence (and avoid the prospect of encumbering prison administrators with the full panoply of *Miranda* responsibilities) is incoherent and unpersuasive. The geographic focus of the interview—whether the questions address conduct that is internal or external to the prison—has no logical correlation to whether the prisoner would "fe[el] . . . at liberty to terminate the interrogation." *Thompson*, 516 U.S. at 112. Either the Sixth Circuit's bright-line test for *Miranda* custody applies in all instances, or it applies in none.[5]

[5] In *Simpson*, the Sixth Circuit posited an equally unpersuasive distinction—that the prisoner was in *Miranda* custody because

In short, two dubious premises underlie the Sixth Circuit's bright-line test—that *Miranda*'s protections expand when the interviewee is a prisoner (as opposed to an ordinary citizen), and when the interview implicates conduct occurring outside (as opposed to inside) the prison. This Court's precedents support neither distinction.

C. *Miranda* custody in the prison setting is properly determined through a totality-of-the-circumstances inquiry.

Five other circuits examine the "totality of the circumstances" to determine whether a prisoner is in custody during questioning. This inquiry best reflects *Miranda*, its progeny, and its objectives.

Under the totality approach, a prisoner is in *Miranda* custody only when he experiences "an added imposition on his freedom of movement" or "a[] measure of compulsion above and beyond the confinement." *United States v. Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994) (alteration and citations omitted). In other words, the interviewer must impose "some restriction on [the prisoner's] freedom of action in connection with the interrogation itself." *Leviston v. Black*, 843 F.2d 302, 304 (8th Cir. 1988). If "there [are] no restrictions . . . over and above ordinary prison confinement," *Miranda* warnings are not required. *Georgison v. Donelli*, 588 F.3d 145, 157 (2d Cir. 2009) (citation omitted); accord *Ellison*, 632

"state agents *unaffiliated with the prison* isolated [him] and questioned him." 615 F.3d at 441 (emphasis added). As here, the court failed to explain how the interviewer's non-affiliation with the prison enhanced the coercive pressures on the inmate.

F.3d at 730; *United States v. Barner*, 572 F.3d 1239, 1245 (11th Cir. 2009).

Fields discounts each of these decisions as turning on one particular feature of the interview: the inmate in *Leviston* asked to speak with law enforcement; officers informed the *Menzer* defendant in advance that they wanted to interview him; and detectives met the *Georgison* prisoner in a visitor's room. See Br. in Opp. to Cert. at 10-13.

But no one fact controlled the analysis. Rather, each circuit "examined 'the totality of the circumstances' to determine whether the inmate was 'in custody' as set forth in *Miranda*." *Menzer*, 29 F.3d at 1232. Relevant factors included the initiating party's identity, the interview's location, its duration, the subject matter, the prisoner's ability to terminate the encounter, and the use of physical restraints or other strong-arm tactics. *Id.*; accord *Ellison*, 632 F.3d at 730; *Georgison*, 588 F.3d at 157; *Leviston*, 843 F.3d at 304.

This totality inquiry is the correct approach. First, it is faithful to precedent. This Court has consistently directed lower courts to "examine *all of the circumstances* surrounding the interrogation" to "determin[e] whether an individual was in custody." *Stansbury*, 511 U.S. at 322 (emphasis added); accord *Beheler*, 463 U.S. at 1125 ("[T]he circumstances of each case must certainly influence a determination of whether a suspect is 'in custody.'"). The Sixth Circuit's rule, which "obviate[s] fact-specific inquiries . . . into the precise circumstances of prison interrogations," runs headlong into that pronouncement. Pet. App. 20a.

Second, a totality inquiry best measures "how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, 468 U.S. at 442. Whether or not "a reasonable person [would] have felt . . . at liberty to terminate the interrogation" turns on all aspects of "the scene" and "the players' lines and actions." *Thompson*, 516 U.S. at 112. The location of the interview is just one component. Thus, a prisoner's segregation from the general population might be probative of a custodial setting—but it is not determinative. An examination of the entire scene—an open room, the presence of only one officer, the availability of food and drink, or an advisement that the prisoner can terminate the interview—may confirm the opposite. By focusing myopically on only one feature of the encounter, the Sixth Circuit's custody inquiry is incomplete and, therefore, deficient.

Third, a totality inquiry affords better protection for suspects. A categorical rule that focuses on only one factor is easy to evade. But the totality test prevents improper circumvention of *Miranda* precisely because it examines *all* of the circumstances surrounding a prison interview.

By any objective measure, the totality approach to *Miranda* custody in the prison setting is the correct one. And under that measure, Fields is not entitled to habeas relief: As the Michigan appellate court found, all restraints on Fields's freedom flowed from "a matter unrelated to the interrogation" and detectives unequivocally informed Fields "that he was free to leave the conference room and return to his cell." Pet. App. 56a. Because Fields did not experience any restraints or coercive

pressures above those inherent in prison life, he was not "in custody" under *Miranda*.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

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