

No. 10-680

IN THE
Supreme Court of the United States

CAROL HOWES, WARDEN,
Petitioner,

v.

RANDALL LEE FIELDS,
Respondent.

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

BRIEF FOR DONOVAN E. SIMPSON AS
AMICUS CURIAE SUPPORTING RESPONDENT

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STATEMENT OF INTEREST

Amicus Donovan E. Simpson is an Ohio prison inmate who has been granted partial federal habeas relief by the U.S. Court of Appeals for the Sixth Circuit. *See Simpson v. Jackson*, 615 F.3d 421 (6th Cir. 2010). The State of Ohio’s petition for certiorari seeking review of that decision remains pending. *See Sheets v. Simpson*, No. 10-458. Mr. Simpson has a direct interest in this case because the Sixth Circuit’s grant of relief rested in part on its resolution of a question similar to the one presented here—indeed, this Court is presumably holding Ohio’s petition pending its decision in this case.¹

Like Respondent Randall Lee Fields, Mr. Simpson was convicted based on statements he made during police interviews conducted while he was serving a prison sentence for an unrelated offense. Also like Mr. Fields, Mr. Simpson was interrogated by officers unaffiliated with the prison after first being isolated from the general population. The Sixth Circuit held that these circumstances meant Mr. Simpson was in “custody” for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966). The court later relied on its decision in Mr. Simpson’s case in rendering the decision under review here.

The Court’s disposition of this case should not affect Mr. Simpson’s ultimate entitlement to the writ be-

¹ Pursuant to Supreme Court Rule 37.6, counsel for Mr. Simpson states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than Mr. Simpson or his counsel made a monetary contribution intended to fund the preparation and submission of this brief. Counsel of record for all parties have consented to the filing of this brief. The statements of consent have been submitted to the Clerk with this filing.

cause the Sixth Circuit’s grant of relief also rested on an unrelated and independently sufficient ground. In addition, the circumstances of Mr. Simpson’s interrogations differed from those at issue here in potentially significant ways. Most importantly, Mr. Simpson, unlike Mr. Fields, was never told that he was free to terminate his interrogations and return to his cell. But Mr. Simpson nonetheless has a substantial interest in this case because this Court’s decision will likely influence its disposition of Ohio’s pending petition for certiorari and would govern any further proceedings in the event of a remand.

SUMMARY OF ARGUMENT

This Court’s precedents establish that when police isolate a prisoner from the general population and interrogate him about a crime that occurred outside the prison, that inmate is in “custody” for *Miranda* purposes. The Michigan Court of Appeals’ decision was contrary to, or an unreasonable application of, that clearly established law, and the Sixth Circuit thus properly held that Mr. Fields is entitled to federal habeas relief.

1. As an initial matter, a state-court decision is “contrary to” clearly established law for purposes of 28 U.S.C. § 2254(d)(1) if the state court applies a rule that conflicts with this Court’s precedent. Here, the Michigan Court of Appeals held that an incarcerated suspect need not be given *Miranda* warnings prior to an interrogation unless there is a “nexus” between the incarceration and the interrogation—that is, unless the suspect was taken into or kept in custody to facilitate police questioning. As even Michigan and its amici acknowledge, *Mathis v. United States*, 391 U.S. 1 (1968), unequivocally rejected any such requirement. Accord-

ingly, § 2254(d)(1)'s prerequisite for habeas relief is satisfied, and this Court should determine de novo whether Mr. Fields was in *Miranda* "custody" during his interrogation.

2. In any event, even apart from this error in the Michigan court's reasoning, Mr. Fields is also entitled to federal habeas relief because that court's result was contrary to *Mathis*. In *Mathis*, this Court held that a prison inmate was in "custody" for *Miranda* purposes when—as here—officers unaffiliated with the prison interrogated him about a crime occurring outside the prison walls. Lower courts have consistently interpreted *Mathis* to hold that prison interrogations conducted under such circumstances are custodial, and nothing in this Court's subsequent decisions has undermined that conclusion. To the contrary, in holding that incarceration alone, without these additional features, does *not* qualify as *Miranda* custody, this Court's recent decision in *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010), reiterated that an inmate *is* in *Miranda* custody during the sort of interrogation at issue here.

3. Even setting *Mathis* aside, moreover, it was an unreasonable application of this Court's other precedents to hold that an inmate who has been isolated and subjected to interrogation by officers from outside the prison was not in *Miranda* custody. Ordinarily, the test for *Miranda* custody is whether the suspect has been deprived of his freedom of movement to a degree associated with a formal arrest. That test is plainly satisfied where, as here, the suspect is incarcerated. And although this Court has created exceptions for a few narrow situations in which a suspect deprived of his freedom of movement is nonetheless not in *Miranda* custody, its reasons for doing so cannot reasonably be extended to interrogations like those at issue here.

4. Finally, Michigan and its amici seek to escape the conclusion dictated by this Court's precedents by proposing to narrow *Mathis* in two ways. Both should be rejected.

First, Michigan and the United States contend that a prison interrogation should be deemed "custodial" only if a court determines that the circumstances of that particular interrogation were coercive. But while this Court has held that certain *categories* of questioning do not present a danger of coercion and so do not require warnings, it has never suggested that *Miranda's* application turns on such a *case-by-case* inquiry. To the contrary, a principal purpose of *Miranda* was to avoid the need for precisely this sort of difficult assessment of coercion in individual cases.

Second, Michigan argues more narrowly that Mr. Fields was not in *Miranda* custody because he was told that he was free to end his interrogation and return to his cell. Outside the prison context, a suspect who is told that he is free to leave generally is not in *Miranda* custody precisely because the test for custody is ordinarily whether a reasonable person would feel that his freedom of movement has been restricted. But the same cannot be said in the prison setting, where—as this Court has recognized—an inmate's freedom of movement is *always* restricted. And merely advising an inmate that he can end the interview and be escorted back to his cell does not remove an otherwise-custodial interview from *Miranda's* scope.

ARGUMENT**I. BECAUSE THE MICHIGAN COURT APPLIED A RULE FORECLOSED BY *MATHIS*, THIS COURT SHOULD DECIDE THE *MIRANDA* CUSTODY ISSUE WITHOUT APPLYING AEDPA DEFERENCE**

Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a federal court may grant a writ of habeas corpus based on a “claim that was adjudicated on the merits in State court proceedings” if the state-court decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1). In applying the statute’s “contrary to” prong, this Court has emphasized that “a state-court decision will certainly be contrary to [its] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [this Court’s] cases.” *Williams v. Taylor*, 529 U.S. 362, 405 (2000); accord *Brown v. Payton*, 544 U.S. 133, 141 (2005); *Bell v. Cone*, 543 U.S. 447, 452-453 (2005); *Mitchell v. Esparza*, 540 U.S. 12, 15-16 (2003); *Early v. Packer*, 537 U.S. 3, 8 (2002).

In this case, the Michigan Court of Appeals’ decision was “contrary to” clearly established law in this sense because it applied a rule this Court squarely rejected in *Mathis*.² The court stated that Mr. Fields was “unquestionably in custody” but denied relief based on

² The Michigan Court of Appeals’ decision is the relevant one for purposes of § 2254(d)(1) because it was the last state-court decision to address Mr. Fields’s claim on the merits. Pet. App. 52a; see, e.g., *Lockyer v. Andrade*, 538 U.S. 63, 68-69, 73 (2003) (applying § 2254(d)(1) to an intermediate appellate court’s decision after the state supreme court denied discretionary review).

what it called the “nexus theory.” Pet. App. 56a-57a & n.3. That rule provides that “[i]n addition to the elements of “custody” and “interrogation,” there must be some nexus between these elements in order for *Miranda* to apply.” Pet. App. 56a (quoting *People v. Herndon*, 633 N.W.2d 376, 396 (Mich. Ct. App. 2001), and *People v. Honeyman*, 546 N.W.2d 719, 723 (Mich. Ct. App. 1996)). In other words, the Michigan Court of Appeals holds that *Miranda* warnings are required only if the suspect was “taken into, or maintained in, custody to facilitate his interrogation.” *Honeyman*, 546 N.W.2d at 723; see *Herndon*, 633 N.W.2d at 396.

As the Sixth Circuit explained, this “nexus” test was created “without citation to federal authority” and is contrary to this Court’s precedent. Pet. App. 14a. In *Mathis*, this Court held that a prison inmate was entitled to *Miranda* warnings prior to an interrogation despite the fact that he “had not been put in jail by the officers questioning him, but was there for an entirely separate offense.” *Mathis v. United States*, 391 U.S. 1, 4 (1968). In so doing, the Court emphatically rejected the suggestion that *Miranda* applies “only to questioning [of] one who is ‘in custody’ in connection with the very case under investigation.” *Id.* The Court concluded that there is “nothing in the *Miranda* opinion which 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” and accordingly dismissed a rule essentially identical to the one adopted by the Michigan Court of Appeals as having “no substance” and “go[ing] against the whole purpose of the *Miranda* decision.” *Id.* at 4-5.

As explained below, see *infra* Part II, the full significance of *Mathis* is disputed here. But even Michigan and its amici, who would read this Court’s decision

as narrowly as possible, acknowledge that it rejected any claim that *Miranda* applies only to suspects “being held for the purpose of questioning.” Pet. Br. 14; *see also* U.S. Br. 19; Ohio Br. 5-6. No party attempts to defend anything like the “nexus” rule.

The Michigan Court of Appeals thus “applie[d] a rule that contradicts the governing law set forth” in *Mathis. Williams*, 529 U.S. at 405.³ Under these circumstances, this Court has held that federal habeas courts are “unconstrained by § 2254(d)(1) because the state-court decision falls within that provision’s ‘contrary to’ clause.” *Id.* at 406. In other words, because “the requirement set forth in § 2254(d)(1) is satisfied,” this Court “must ... resolve [Mr. Fields’s] claim without the deference AEDPA otherwise requires.” *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007); *see also Cullen v. Pinholster*, 131 S. Ct. 1388, 1410-1411 (2011) (explaining that *Williams* “did not apply AEDPA deference” because it was “reviewing a state-court decision that did not apply the correct legal standard”).⁴

³ The Michigan Court of Appeals also observed in passing that Mr. Fields was told that he could end the interview and return to his cell. Pet. App. 56a. But the court did not explain the relevance of that fact to its analysis (if any), and the only legal standard it articulated was the erroneous “nexus” test. Indeed, the court specifically emphasized that it was bound by its past decisions announcing that test “under the rule of stare decisis.” Pet. App. 56a-57a & n.3.

⁴ Michigan briefly suggests that the Sixth Circuit improperly applied a new rule in violation of *Teague v. Lane*, 489 U.S. 288 (1989). *See* Pet. Br. 18 n.2. To the extent that the Court deems this footnote sufficient to raise a *Teague* issue at all, it comes too late. A habeas court must consider *Teague* “in addition to performing any analysis required by AEDPA,” but only where the

The Sixth Circuit’s decision should therefore be affirmed if this Court determines that Mr. Fields was in *Miranda* custody under a de novo application of the correct legal rule. The rest of this brief demonstrates, in the alternative, that the Sixth Circuit’s decision was correct even if “the deference AEDPA [ordinarily] requires,” *Panetti*, 551 U.S. at 953, applies here. And because Mr. Fields’s claim satisfies that heightened test, it follows *a fortiori* that he should also prevail under the appropriate de novo standard.

II. *MATHIS* CLEARLY ESTABLISHES THAT *MIRANDA* WARNINGS ARE REQUIRED PRIOR TO INTERROGATIONS LIKE THE ONE AT ISSUE HERE

Miranda “concluded that the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements.” *Dickerson v. United States*, 530 U.S. 428, 435 (2000). The Court therefore held that “the admissibility in evidence of any statement given during custodial interrogation of a suspect would depend on whether the police provided the suspect with [the] four warnings” that “have come to be known colloquially as ‘*Miranda* rights.’” *Id.*

Miranda defined “custodial interrogation” as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”

Teague issue “is properly raised by the state.” *Horn v. Banks*, 536 U.S. 266, 272 (2002). Here, Michigan failed to raise the issue in its briefs in the district court or the Sixth Circuit, and mentioned it only in a footnote in its petition for certiorari. Accordingly, it is waived. *See, e.g., Hopkins v. Reeves*, 524 U.S. 88, 94 n.3 (1998) (declining to consider *Teague* where “the State raised th[e] argument for the first time in its petition”).

Miranda v. Arizona, 384 U.S. 436, 444 (1966). Shortly thereafter, *Mathis* held that a prison inmate was in *Miranda* custody when agents from outside the prison questioned him about an offense unrelated to his incarceration. Lower courts have consistently interpreted *Mathis* to establish that interrogations conducted under those circumstances are custodial, and nothing in this Court’s subsequent precedents has undermined that conclusion. To the contrary, this Court’s recent decision in *Shatzer* further confirmed it—at least where, as here, the inmate was isolated from the general prison population prior to questioning.

Mr. Fields, like the inmate in *Mathis*, was interrogated by officers from outside the prison about a crime unrelated to his incarceration. The Michigan Court of Appeals nonetheless held that he was not entitled to *Miranda* warnings. That conclusion was “contrary to” *Mathis* within the meaning of § 2254(d)(1) because “the state court confront[ed] a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrive[d] at a result different from [this Court’s] precedent.” *Williams*, 529 U.S. at 406. The contrary arguments raised by Michigan and its amici rest on a misstatement of the issues raised and resolved in *Mathis* itself, an erroneous understanding of subsequent legal developments, and a misinterpretation of this Court’s discussion of the issue in *Shatzer*.

A. *Mathis* Held That Interrogations Like The One At Issue Here Are Custodial

In *Mathis*, this Court reviewed a conviction resting in part on unwarned statements “obtained from [a suspect] by a government agent while [the suspect] was in prison serving a state sentence.” 391 U.S. at 2. The defendant had been interviewed by an IRS agent on

two occasions as part of a “routine tax investigation.” *Id.* at 3-4 & n.2. The Fifth Circuit held that no *Miranda* warnings were required because those interviews “cannot be properly viewed as subjecting [the defendant] to the overbearing psychological pressures incident to the ‘custodial interrogation’ contemplated in *Miranda*.” *Mathis v. United States*, 376 F.2d 595, 597 (5th Cir. 1967). This Court reversed, emphasizing that “[i]n speaking of ‘custody’ the language of the *Miranda* opinion is clear and unequivocal” and concluding that the defendant’s unwarned statements were inadmissible because he had been in “custody” within the meaning of *Miranda*. 391 U.S. at 5.

1. Michigan and the amici States seek to minimize the significance of *Mathis* by repeatedly asserting that the Court did not actually hold that the interrogation at issue was custodial because “the government had conceded the point that the defendant was in custody.” Pet. Br. 14; *see also id.* at 16-17; Ohio Br. 5 (“the federal government conceded that the *Mathis* prisoner was in custody”). This characterization is central to Michigan’s characterization of *Mathis*, and it is demonstrably incorrect.

Far from making the concession that Michigan describes, the government argued vigorously and at length that the defendant in *Mathis* was not questioned while in “the type of custody involved in [*Miranda*].” U.S. Br. 17, *Mathis*, No. 67-726, 1968 WL 129324 (U.S. Feb. 26, 1968); *see also id.* at 7 (arguing that the interrogation at issue lacked the “compelling pressures” that are “incident to the type of custodial interrogation exemplified by [*Miranda*]”); *id.* at 17-19 (same). In rejecting these arguments and suppressing the statements at issue, therefore, *Mathis* necessarily determined that the defendant *was* in “custody” for purposes of

Miranda. Indeed, the dissent described the Court’s holding in precisely those terms, as “concluding that petitioner was ‘in custody’ in the sense in which that phrase was used in *Miranda*.” 391 U.S. at 7 (White, J., dissenting).⁵

This Court’s subsequent decisions confirm this interpretation by consistently characterizing *Mathis* as holding that the defendant in that case was in *Miranda* custody. See, e.g., *New York v. Quarles*, 467 U.S. 649, 654 & n.4 (1984) (*Mathis* held that a “prison cell during [the] defendant’s sentence for an unrelated offense” was a “custodial circumstance[.]”); *Oregon v. Mathiason*, 429 U.S. 492, 494-495 (1977) (discussing *Mathis* while reviewing precedents defining “custodial interrogation”); *Beckwith v. United States*, 425 U.S. 341, 347 (1976) (*Mathis* “squarely grounded its holding on the custodial aspects of the situation”).

2. *Mathis* thus held that the prison inmate in that case was in *Miranda* “custody” when he was questioned by IRS agents about an offense unrelated to his incarceration. In so doing, moreover, the Court did not inquire any further into the particular circumstances of the interviews—for example, it did not require a showing that the inmate had been placed under special restraints on his freedom of movement or otherwise subjected to especially coercive treatment.

Michigan and its amici contend that the Court’s failure to address these details somehow indicates that

⁵ Notably, the United States’ brief in this case declines to endorse Michigan’s erroneous characterization of the government’s position in *Mathis* and correctly concedes that “the necessary premise” of this Court’s decision was “that *Mathis* was in custody for *Miranda* purposes.” U.S. Br. 18.

Mathis does not establish a rule about *Miranda* custody in the prison context. See Pet. Br. 16; U.S. Br. 18-19; Ohio Br. 6. But that has it exactly backwards: The fact that the Court held an interrogation by officers from outside the prison about an unrelated offense to be custodial *without* requiring any additional facts necessarily means that the Court concluded that those circumstances, without more, were sufficient to establish *Miranda* custody.

Any doubt about that conclusion is removed by the *Mathis* dissent and the government's brief. Justice White's dissent argued that the defendant had been questioned "in familiar surroundings" and that "[n]either the record nor the Court suggests reasons why petitioner was 'coerced' into answering [the agent's] questions any more than is the citizen interviewed at home." 391 U.S. at 7 (White, J., dissenting); see also *id.* at 8 (criticizing "[t]he Court's willingness to reverse without explaining why the reasons given for the *Miranda* decision have any relevance to the facts of this case"). The government, for its part, argued that "[w]hatever facts may be presented by other instances of prison questioning, ... the circumstances of this case exhibit no 'pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.'" U.S. Br. 19, *Mathis*, 1968 WL 129324. In particular, the government noted that the defendant "was interviewed in surroundings which had been familiar to him for twenty months," *id.* at 17; that the agent asked him "only two questions," neither of which was accusatory, *id.*; that there was "nothing in the agent's purpose or his manner which might be characterized as having a potential for undermining [the defendant's] desire to remain silent," *id.* at 7; and that the defendant "could hardly

[have] believe[d] that anything he might say to [the agent] could relieve him of any of the consequences of his State sentence,” *id.* at 18.

In the face of these arguments from the government and the dissenting Justices, the Court’s failure to address the additional circumstances of the interviews at issue in *Mathis* cannot be interpreted as anything other than a conclusion that they did not matter to its holding that the defendant was in *Miranda* custody. *Mathis* thus establishes that a prison inmate is in custody for *Miranda* purposes when, as in that case and this one, he is interrogated by officers unaffiliated with the prison about criminal conduct occurring beyond the prison walls.

B. Lower Courts Have Interpreted *Mathis* To Hold That Interrogations Like The One At Issue Here Are Custodial

Michigan objects that “no other circuit has interpreted [*Mathis*] to create the bright-line rule now adopted by the Sixth Circuit.” Pet. Br. 20. But that claim is refuted by the very case on which Michigan itself chiefly relies. As Michigan and its amici acknowledge, the leading circuit court precedent on *Miranda* custody in the prison context is *Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978). See Pet. Br. 23; U.S. Br. 25-28; Ohio Br. 13-14. And the Ninth Circuit’s reading of *Mathis* in *Cervantes* is entirely consistent with the Sixth Circuit’s interpretation in the decision below.⁶

⁶ Michigan also mischaracterizes the nature of the Sixth Circuit’s rule. The “bright-line rule” that the other circuits have “refused to recognize,” Pet. Br. 20, is a rule that every prison inmate is “automatically always in ‘custody’ within the meaning of

In *Cervantes*, the Ninth Circuit declined to read *Mathis* as “creat[ing] a per se rule that any investigatory questioning inside a prison requires *Miranda* warnings.” 589 F.2d at 427. Such a rule, the court explained, would “totally disrupt prison administration” because it would prevent prison officials from engaging in “[g]eneral on-the-scene” questioning about incidents occurring in the prison. *Id.* Accordingly, the court concluded that a prisoner is in *Miranda* custody only if he is interrogated under circumstances in which “a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting.” *Id.* at 428.

Michigan and its amici rely heavily on this “added restriction” rule, asserting that it is inconsistent with the Sixth Circuit’s decision. *See* Pet. Br. 20-23; U.S. Br. 26; Ohio Br. 13-15. Indeed, the United States effectively urges this Court to adopt the *Cervantes* rule, albeit without specifically attributing it to the Ninth Circuit. *See* U.S. Br. 12 (arguing that a prisoner is in *Miranda* custody only when he is subjected to “restrictions above and beyond those incident to normal prison life”). But Michigan and its amici ignore *Cervantes*’s

Miranda” such that warnings would be required prior to *any* questioning by government agents, including “myriad informal conversations between inmates and prison guards,” *United States v. Conley*, 779 F.2d 970, 973 (4th Cir. 1985). Although the Sixth Circuit called its approach a “bright line test,” Pet. App. 18a, it is quite narrow, applying only when (1) officers unaffiliated with the prison (2) isolate a prison inmate to (3) question him about criminal conduct occurring outside the prison, and where (4) the inmate neither initiated contact with the officers nor agreed to the interview in advance, *see* Pet. App. 10a-12a & nn. 3-4 (announcing the Sixth Circuit’s rule and distinguishing cases lacking these features).

clear and specific discussion of *Mathis*, which is entirely consistent with the Sixth Circuit's reading:

[The “added restriction” test] best reconciles *Mathis* with the principles of *Miranda*. The questioning of Mathis by a government agent, not himself a member of the prison staff, on a matter not under investigation within the prison itself *may be said to have constituted an additional imposition on his limited freedom of movement*, thus requiring *Miranda* warnings.

589 F.2d at 428 (emphasis added). In other words, *Cervantes* made clear that the type of interrogation at issue in *Mathis* and in this case requires *Miranda* warnings because such interrogation *by definition* constitutes an “added restriction” on a prisoner's freedom. *See id.* And the Ninth Circuit has since confirmed this interpretation, relying on this language from *Cervantes* to hold that *Miranda* warnings were required before an interrogation possessing these features. *See United States v. Cheely*, 36 F.3d 1439, 1447 (9th Cir. 1994).

Michigan also relies on *United States v. Conley*, 779 F.2d 970 (4th Cir. 1985). *See* Pet. Br. 22-23. But *Conley* is equally consistent with the Sixth Circuit's approach: The Fourth Circuit held that an inmate was not in *Miranda* custody when he was questioned by guards escorting him to the infirmary after an incident in the prison, *id.* at 973-974, but then stated that the inmate *was* in custody under *Mathis* and *Cervantes* during a subsequent interrogation by an FBI investigator because “[h]e's an outside agent who's come in [to the prison],” *id.* at 974 n.5.

Numerous other circuits have likewise endorsed the *Cervantes* approach. *See, e.g., Garcia v. Singletary*, 13 F.3d 1487, 1491-1492 (11th Cir. 1994); *United States*

v. *Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984). And courts applying that approach consistently hold that, in the absence of special circumstances not present here, inmates interrogated by officers from outside the prison about criminal conduct unrelated to their incarceration are in *Miranda* custody. See, e.g., *Jackson v. Giurbino*, 364 F.3d 1002, 1008 (9th Cir. 2004); *United States v. Chamberlain*, 163 F.3d 499, 503-504 (8th Cir. 1998); *United States v. Byram*, 145 F.3d 405, 409 & n.1 (1st Cir. 1998); *Cheely*, 36 F.3d at 1447.⁷

C. This Court’s Subsequent Cases Confirm This Interpretation Of *Mathis*

Michigan and the United States contend that the Sixth Circuit’s reading of *Mathis* cannot be correct because *Illinois v. Perkins*, 496 U.S. 292, 299 (1990), stated that “[t]he bare fact of custody may not in every instance require a warning.” See Pet. Br. 19; U.S. Br. 19. Michigan also relies on *Shatzer*’s statement that prior to that case, this Court “ha[d] never decided whether incarceration constitutes custody for *Miranda* purposes, and ha[d] indeed explicitly declined to address the issue,” *Maryland v. Shatzer*, 130 S. Ct. 1213, 1224 (2010). See Pet. Br. 19. These arguments misunderstand the legal background for and significance of this Court’s statements in *Perkins* and *Shatzer*.

⁷ Michigan and its amici cite other circuit court decisions holding particular prison interrogations to be non-custodial. As Mr. Fields demonstrates, however, those precedents are distinguishable—and, in many cases, actually were distinguished by the Sixth Circuit—because they involved the sort of on-the-scene questioning contemplated in *Cervantes* or because the interviews were initiated by the inmates themselves. See Resp. Br. 27-35.

1. Although *Mathis* established that prison interrogations conducted under circumstances like those present in that case are custodial, the lower courts generally followed *Cervantes* and *Conley* in holding that questioning of prison inmates under certain *other* circumstances does not require *Miranda* warnings—for example, if the prisoner initiated the conversation, *see, e.g., Leviston v. Black*, 843 F.2d 302, 303 (8th Cir. 1988), or the questioning involved informal inquiries by guards about incidents occurring in the prison, *see, e.g., Conley*, 779 F.2d at 973-974. At the same time, other judges—including Justice Marshall—argued that *Miranda* should be extended to *all* questioning of prison inmates, regardless of the surrounding circumstances. *See, e.g., Perkins*, 496 U.S. at 303-304 (Marshall, J., dissenting); *Bradley v. Ohio*, 497 U.S. 1011, 1015 (1990) (Marshall, J., dissenting from denial of certiorari); *United States v. Morales*, 834 F.2d 35, 40 (2d Cir. 1987) (Oakes, J., concurring); *United States v. Cadmus*, 614 F. Supp. 367, 371-372 (S.D.N.Y. 1985).

This Court's statement in *Perkins* that “[t]he *bare fact* of custody may not in every instance require a warning,” 496 U.S. at 299 (emphasis added), simply recognized that this question remained unsettled. Nothing in *Perkins* remotely suggested that *Mathis*'s finding of custody was no longer good law on facts like those in *Mathis* itself. Similarly, *Shatzer*'s observation that this Court “ha[s] never decided whether incarceration constitutes custody for *Miranda* purposes,” 130 S. Ct. at 1224, likewise referred what *Perkins* called the “bare fact” of incarceration, not to a police interrogation like the one at issue in *Mathis*. Indeed, the Court's subsequent discussion in *Shatzer* made clear that the type of “incarceration” it was addressing was the “period during which a suspect was not interrogated, but was sub-

ject to a baseline set of restraints imposed pursuant to a prior conviction.” *Id.*

2. *Shatzer* also went on to remove any doubt about the correctness of the Sixth Circuit’s decision here. That case concerned statements made by a suspect interviewed on two occasions while incarcerated for an unrelated offense. The specific question presented was whether that suspect was in “custody” for *Miranda* purposes during the two-and-a-half years *between* those interrogations, such that *Edwards v. Arizona*, 451 U.S. 477 (1981), barred the police from attempting to interrogate him a second time after he invoked his right to counsel during the first interview. The Court resolved the question left open in *Perkins*, holding that mere incarceration, without more, does not constitute “custody for *Miranda* purposes.” 130 S. Ct. at 1224.

In holding that ordinary incarceration is not *Miranda* custody, however, the Court was careful to “distinguish the duration of incarceration from the duration of what might be termed interrogative custody.” 130 S. Ct. at 1225 n.8. The Court explained that “[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of *that separation* is assuredly dependent upon his interrogators” and accordingly *does* constitute *Miranda* custody. *Id.* Accordingly, the Court explained that “[t]he ‘inherently compelling pressures’ of custodial interrogation *ended* when [the suspect] returned to his normal life” in the general population. *Id.* at 1225 (emphasis added). The Court thus expressly recognized that during the period when the inmate was removed from the general population and subjected to interrogation, he *was* subject to the “‘inherently compelling pressures’ of custodial interro-

gation.” And—in contrast to its discussion of the *Miranda* status of ordinary incarceration—the Court gave no indication that it believed that these statements broke new ground or constituted a change in the law.

Although they speak directly to the question at issue here, Michigan and the United States largely ignore these statements from *Shatzer*. Instead, they focus on the Court’s observation that “[n]o one question[ed] that Shatzer was in custody for *Miranda* purposes during the interviews” themselves, 130 S. Ct. at 1224. See Pet. Br. 18; U.S. Br. 20. But although the custodial status of the interrogations was not contested by the parties, *Shatzer*’s reaffirmation that the inmate in that case was in custody during the interviews themselves was not mere dicta. *Shatzer* elaborated on *Edwards* by establishing a bright-line rule that police may initiate questioning of a suspect who has previously invoked his *Miranda* right to counsel if and only if he has experienced a “break in custody” of more than “14 days.” 130 S. Ct. at 1222-1223. The Court made clear that its distinction between ordinary incarceration (which is not *Miranda* custody) and “interrogative custody” (which is) was an important qualification to this 14-day rule, explaining that “once he has asserted a refusal to speak without assistance of counsel[,] *Edwards* prevents any efforts to get [a suspect incarcerated for an unrelated offense] to change his mind *during that interrogative custody*.” *Id.* at 1225 n.8 (emphasis added).

III. THE MICHIGAN COURT OF APPEALS' DECISION WAS AN UNREASONABLE APPLICATION OF THIS COURT'S OTHER PRECEDENTS DEFINING *MIRANDA* CUSTODY

For the foregoing reasons, the Michigan Court of Appeals' decision was "contrary to" *Mathis* because that court "confront[ed] a set of facts that are materially indistinguishable from [*Mathis*] and nevertheless arrive[d] at a result different from [this Court's] precedent." *Williams*, 529 U.S. at 406. But even if that were not true, Mr. Fields would still be entitled to habeas relief under 28 U.S.C. § 2254(d)(1) because the result reached by the Michigan Court of Appeals was an "unreasonable application" of this Court's precedents defining *Miranda* custody.

1. Ordinarily, the test for *Miranda* custody is whether the suspect has been subjected to "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). That test requires a court to consider the "circumstances surrounding the interrogation" to determine whether "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

Although this "freedom-of-movement test" is usually determinative, it "identifies only a necessary and not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. It is not sufficient because this Court has identified four circumstances in which a suspect is deprived of his freedom of movement and yet does not face the coercive pressures that motivated the *Miranda* rule. Those circumstances are questioning during an ordinary traffic stop, see *Berkemer v. McCarty*, 468 U.S. 420, 437-439 (1984); the brief ques-

tioning associated with an investigative stop conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), see *Berkemer*, 468 U.S. at 439-440; ordinary incarceration in the general prison population, see *Shatzer*, 130 S. Ct. at 1225-1225; and questioning by an undercover officer, see *Perkins*, 496 U.S. at 300.

2. When officers from outside the prison isolate an inmate from the general population and interrogate him about an unrelated offense, that inmate has unquestionably been subjected to a “restraint on freedom of movement’ of the degree associated with a formal arrest.” *Beheler*, 463 U.S. at 1125. Indeed, as this Court recently emphasized, “[t]his test, no doubt, is satisfied by all forms of incarceration.” *Shatzer*, 130 S. Ct. at 1224. Moreover, an interrogation conducted under these circumstances does not fall into any of the narrow categories that this Court has excepted from the general rule that suspects who have been deprived of their freedom of movement are entitled to *Miranda* warnings before any interrogation.

3. Nor can this Court’s reasons for carving out those exceptions reasonably be extended to apply to interrogations where, as here, an inmate is isolated from the general population and questioned by officers unaffiliated with the prison about an offense occurring outside the prison walls.

The premise of *Miranda* is that custodial interrogation creates “inherently compelling pressures” that impair the exercise of Fifth Amendment rights and make it difficult to distinguish voluntary from involuntary confessions. *Miranda* identified three features that contribute to these inherently compelling pressures: First, and most importantly, custodial interrogation generally takes place in “isolation” or “privacy,”

384 U.S. at 449-450, and “[t]o be alone with the suspect is essential to prevent distraction and to deprive him of outside support,” *id.* at 455; *see also id.* at 461 (describing “the compulsion to speak in the isolated setting of the police station”). Second, custodial interrogation often occurs in “unfamiliar surroundings.” *Id.* at 450; *see also id.* at 461 (describing the pressures on “[a]n individual swept from familiar surroundings into police custody”). Third, the Court described the psychological pressures created by sophisticated police questioning, which, when combined with the isolation and unfamiliar surroundings of custodial interrogation, can allow police to “persuade, trick, or cajole [the suspect] out of exercising his constitutional rights.” *Id.* at 455; *see id.* at 448-455.

Some or all of these features are absent in each of the categories of interrogation that this Court has held to be noncustodial despite restraints on the suspect’s freedom of movement. *Perkins* explained that questioning by an undercover officer does not create the pressures of ordinary custodial interrogation because the suspect is not even aware that he is speaking to the police. 496 U.S. at 297. *Berkemer* concluded that two features of ordinary traffic stops and *Terry* stops render them noncustodial: First, the detention “is presumptively temporary and brief,” generally lasting “only a few minutes.” 468 U.S. at 437. Second, the circumstances “are not such that the motorist feels completely at the mercy of the police,” primarily because “the typical traffic stop is public, at least to some degree.” *Id.* at 438.

Similarly, *Shatzer* explained that “[s]entenced prisoners” in the general population “are not isolated with their accusers” because “[t]hey live among other inmates, guards, and workers, and often can receive visi-

tors and communicate with people on the outside by mail or telephone.” 130 S. Ct. at 1224. The Court also noted that when incarcerated suspects are released from an interrogation back into the general population, they “return to their accustomed surroundings and daily routine.” *Id.* Finally, the Court observed that once the interrogation ends, “[t]he former interrogator has no power to increase the duration of incarceration” and “no apparent power to decrease the time [to be] served.” *Id.* at 1225.

The type of prison interrogation at issue here and in Mr. Simpson’s case is very different. First, like the paradigmatic *Miranda* interrogation but unlike the interrogations at issue in *Shatzer* and *Berkemer*, it occurs in isolation—Mr. Fields, for example, was alone in a conference room with two officers, Pet. App. 3a-4a, and Mr. Simpson was likewise isolated with two law enforcement officers during his interviews, *see Simpson v. Jackson*, 615 F.3d 421, 441 (6th Cir. 2010).

Second, although an inmate may be familiar with the prison setting as a general matter, prison interrogations often occur in restricted or otherwise unfamiliar areas. Mr. Fields was taken to a conference room in the Sheriff’s Department, Pet. App. 3a, and Mr. Simpson was questioned in a conference room in a prison administration building that was some distance from the portion of the facility where he was incarcerated and to which he would not otherwise have had access. *See Simpson*, 615 F.3d at 426-427. *Shatzer* expressly recognized this distinction, noting that an interrogated inmate is in familiar surroundings only *after* the interview is over and he is “released back into the general prison population.” 130 S. Ct. at 1224.

Third, the seven-hour interrogation in this case, Pet. App. 4a, demonstrates that prison interrogations—unlike the traffic stops and *Terry* stops addressed in *Berkemer*—need not be of limited duration.

Finally, in contrast to the situation in *Shatzer*, an inmate being subjected to interrogation in isolation is in the immediate control of his interrogators. As *Shatzer* explained, “[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of *that separation* is assuredly dependent on his interrogators.” 130 S. Ct. at 1225 n.8. Moreover, during questioning the interrogating officers will often be able to pressure the inmate by offering to obtain or support parole or other early release. Mr. Simpson’s case illustrates the possibility for this sort of pressure: His interrogators offered to—and subsequently did—secure his early release from prison in exchange for his cooperation with their investigation. See *Simpson*, 615 F.3d at 425-426. The ability to offer to secure such release, or to offer to assist an inmate in obtaining parole, is a powerfully coercive device, and its use in Mr. Simpson’s case was not an isolated occurrence.⁸

In sum, therefore, the type of prison interrogation at issue here reflects precisely the sort of “inherently compelling pressures” present in the paradigmatic

⁸ See, e.g., *Allie v. Cunningham*, No. 08-cv-11082, 2009 WL 1883258, at *1 (S.D.N.Y. June 30, 2009) (a prosecutor “pledged ... to send a letter to [the inmate’s] Parole Board detailing his assistance to the investigation”); *State v. Beck*, No. M2008-00467, 2009 WL 1312955, at *2 (Tenn. Crim. App. May 11, 2009) (inmate was “granted early release ... in exchange for his promise to assist ... in drug investigations”).

Miranda interrogation and includes none of the mitigating features on which this Court relied in *Berkemer*, *Perkins*, and *Shatzer*. Far from “extend[ing] greater *Miranda* rights to prisoners than members of the general population,” Pet. Br. 30, the Sixth Circuit’s decision simply recognizes that the type of prison interrogation at issue here creates the sort of coercive pressures against which *Miranda* was intended to protect. This Court recognized precisely that point in *Berkemer*. It explained that “the atmosphere surrounding an ordinary traffic stop is substantially less ‘police dominated’ than that surrounding the kinds of interrogation at issue in *Miranda* itself and the subsequent cases in which we have applied *Miranda*,” 468 U.S. at 438-439 (citation omitted). It then cited *Mathis* as one of these subsequent applications of *Miranda*, thereby identifying “question[ing] by a Government agent while [the suspect is] in jail” as the sort of “police dominated” atmosphere in which *Miranda* warnings are necessary. *Id.* at 439 n.28.

Accordingly, the Michigan Court of Appeals’ conclusion that Mr. Fields was not in custody was an “unreasonable application of” the clear law as established by this Court” because the state court “relied on [an] inapplicable exception” to this Court’s general rule that a suspect is in custody whenever he is questioned after being deprived of his freedom of movement in a significant way. *Williams*, 529 U.S. at 397.

IV. THIS COURT SHOULD REJECT MICHIGAN’S INVITATIONS TO NARROW *MATHIS*

As demonstrated above, *Mathis* established—and *Shatzer* confirmed—that *Miranda* warnings are required when police isolate an inmate from the general population and interrogate him about an offense occur-

ring outside the prison. Michigan and the United States urge this Court to narrow *Mathis* by adopting a new rule for *Miranda* custody in the prison context. Both Michigan and the United States contend that a prison interrogation should not be deemed custodial unless a reviewing court finds that the circumstances of that particular interrogation created a risk of coercion. Michigan also argues, more narrowly, that a prison interrogation is not custodial where, as here, the prisoner is told that he is free to terminate the interrogation and return to the general prison population. Both arguments should be rejected.

A. *Miranda* Custody Does Not Depend On A Case-By-Case Inquiry Into Whether The Circumstances Of An Interrogation Were Coercive

The United States asserts that the *Miranda* custody inquiry for a prison interrogation should depend on “the objective circumstances of the interview and whether those circumstances created the coercive pressures addressed in *Miranda*.” U.S. Br. 9. Michigan likewise advocates “[a] context-specific approach” that “considers all the facts and circumstances to determine whether a prisoner’s confession was voluntary.” Pet. Br. 13. These arguments suffer from two fatal defects: They were advanced by the United States and rejected by this Court in *Mathis*, and they are fundamentally at odds with this Court’s broader approach to *Miranda* custody.

1. As an initial matter, this sort of case-by-case inquiry was rejected in *Mathis*. There, the government “emphasized” that “[a]n individual’s confinement in a penitentiary, combined with police interrogation seeking to elicit incriminatory statements for use in a crimi-

nal prosecution, may in some circumstances present the same ‘compelling pressures’ which were found in *Miranda* to inhere in stationhouse interrogation.” U.S. Br. 18, *Mathis*, 1968 WL 129324. The government thus argued only that *Miranda* had no application in that case because—it claimed—the particular circumstances of the interrogation at issue were not coercive. *See id.* at 18-19.⁹ In so doing, it advocated a case-by-case approach strikingly similar to the one Michigan and the United States propose here:

Miranda may mean that in situations squarely within the framework of that case a court need determine only whether the warnings were given and need not inquire whether the particular interrogation was likely to compel the defendant to speak against his will. But where the issue is whether the *Miranda* safeguards should be required in significantly different circumstances, the purpose and manner of the questioning, its duration, and the effect of the subject’s confinement on his ability to resist this type of questioning are all relevant ... to the determination whether the situation is characterized by “inherently compelling pressures.”

Id. (footnote omitted). In holding that the defendant in *Mathis* was in custody without identifying any specific coercive features of the interrogation or inquiring into the allegedly non-coercive circumstances identified by

⁹ Michigan and the amici States are thus incorrect in arguing that the government advocated a “per se” rule that *Miranda* is inapplicable to prison interrogations. *See* Pet. Br. 15-16; Ohio Br. 5-6; *see also* U.S. Br. 18.

the government, this Court necessarily rejected its proposed case-by-case approach.

2. In any event, such a case-by-case approach is at odds with decades of precedent even apart from *Mathis*. To be sure, Michigan and the United States are correct that a reviewing court generally must examine “the circumstances surrounding the interrogation.” *Thompson*, 516 U.S. at 112. But this Court has emphasized that although “a court must examine all of the circumstances surrounding the interrogation,” “the ultimate inquiry is simply whether there [was] a “formal arrest or restraint on freedom of movement” of the degree associated with formal arrest”—not whether the particular interrogation was coercive. *Stansbury v. California*, 511 U.S. 318, 322 (1994); *see also Beheler*, 463 U.S. at 1125.

As explained above, this freedom-of-movement test unquestionably “is satisfied by all forms of incarceration.” *Shatzer*, 130 S. Ct. at 1224. Michigan and the United States thus ask this Court to go further and hold that a prison inmate is not in *Miranda* custody unless the particular circumstances of the interrogation are coercive or render the confession involuntary. But this Court has never endorsed that sort of case-by-case inquiry. To the contrary, it has considered the coercive effect of the circumstances of police questioning only in holding that certain *categories* of interrogation do not raise the coercive pressures to which *Miranda* is addressed and thus are not properly considered “custodial” even if the suspect’s freedom of movement has been restricted. In so doing, the Court has looked to the characteristics of the *type* of interrogation at issue and announced a general rule rather than prescribing a case-by-case inquiry. *See Shatzer*, 130 S. Ct. at 1224 (“lawful imprisonment imposed upon conviction of a

crime does not create the coercive pressures identified in *Miranda*"); *Perkins*, 496 U.S. at 300 ("[A]n undercover law enforcement officer posing as a fellow inmate need not give *Miranda* warnings to an incarcerated suspect before asking questions that may elicit an incriminating response."); *Berkemer*, 468 U.S. at 437 (observing that *Miranda* applies "only in those *types* of situations in which the concerns that powered the decision are implicated" and concluding that it does not apply to traffic stops or *Terry* stops (emphasis added)); see also *Pennsylvania v. Bruder*, 488 U.S. 9, 11 (1988) (describing "*Berkemer's* rule" that "ordinary traffic stops do not involve custody for the purposes of *Miranda*").

More fundamentally, a case-by-case inquiry into the coercive effect of an individual interrogation is at odds with the premise of *Miranda* itself. Prior to *Miranda*, courts determined the admissibility of confessions by conducting a case-by-case inquiry into the totality of the circumstances surrounding the confession to determine whether it was voluntary. See *Dickerson*, 530 U.S. at 444. That voluntariness test proved hard to apply, and even harder to apply consistently. See *id.* Accordingly, one of the principal purposes of *Miranda* was "to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary." *Berkemer*, 468 U.S. at 433; see *Arizona v. Roberson*, 486 U.S. 675, 680 (1988). Michigan and the United States, however, would import precisely the same sort of difficult, case-by-case inquiry into *Miranda's* threshold custody inquiry. The difficulty and potential arbitrariness of such an exercise is confirmed by the litany of factors identified by their briefs, which ask this court to consider the size, arrangement,

and lighting of the room in which the interrogation is conducted, Pet. Br. 33; whether the door was open or closed, *id.*; any restraints placed on the suspect, *id.*; the manner in which the suspect was escorted to the interview, U.S. Br. 29; the tone and content of the officers' questions, *id.*; whether the suspect was offered water, *id.*; the length of the interview, *id.*; and—presumably—any other fact that might be deemed relevant to whether the circumstances of the interview had a tendency to pressure Mr. Fields to waive his rights.¹⁰

Moreover, this Court has previously rejected attempts to make *Miranda* custody expand or contract depending on the coercive effect of a particular interrogation. *Mathiason* emphasized that “a noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a ‘coercive environment.’” 429 U.S. at 495; *see also Beckwith*, 425 U.S. at 345. Likewise, a *custodial* situation is not converted into one in which *Miranda* does not apply simply because a reviewing court concludes that the particular circumstances were not coercive. *Cf. Estelle v. Smith*, 451 U.S. 454, 467 (1981) (*Miranda* warnings were required before a “psychiatrist desig-

¹⁰ To be sure, courts already examine the totality of the circumstances surrounding an interview to the extent they are relevant to the question whether “a reasonable person [would] have felt he or she was at liberty to terminate the interrogation and leave.” *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011). But that is a far simpler task than the unbounded inquiry into coercion or voluntariness proposed by Michigan and its amici. *Cf. id.* (the benefit of the objective freedom-of-movement test is that “it is ‘designed to give clear guidance to the police’”).

nated by the trial court to conduct a neutral competency examination” could question a suspect awaiting trial).

This Court should continue to decline to convert the *Miranda* custody test into a case-by-case inquiry into the coercive effect of the circumstances of particular interrogations.

B. The Fact That Mr. Fields Was Advised That He Was Free To Terminate The Interview Should Not Alter This Result

Michigan also advances a narrower argument: that Mr. Fields should be deemed not to have been in custody because he was advised that he was free to terminate the interview and return to his cell. Pet. Br. 29; *see also id.* at 33 (characterizing this as the “[m]ost important” circumstance of the interrogation).

Because Mr. Simpson, unlike Mr. Fields, was not informed that he was free to leave his interrogations, this narrower ground for reversal would provide no reason to question the correctness of the Sixth Circuit’s judgment in his case. Mr. Simpson would, of course, prefer such a decision to one that embraces the more radical narrowing of *Miranda* protections sought by Michigan’s more sweeping arguments. Nonetheless, even that narrower ground should still be rejected as inconsistent with established precedent.

As Michigan recognizes, the ordinary *Miranda* custody inquiry is “whether a reasonable person would ‘have felt he or she was not at liberty to terminate the interrogation and leave.’” Pet. Br. 28. It also concedes that “a prisoner is not free to leave the prison.” *Id.* at 29. It asserts, however, that “the relevant question is whether the prisoner can leave the interrogation.” *Id.*

But there is no basis for that proposed modification to the usual test. To the contrary, this Court has rejected it, observing that the “freedom-of-movement” component of the *Miranda* custody inquiry is “no doubt ... satisfied by all forms of incarceration.” *Shatzer*, 130 S. Ct. at 1224. Accordingly, advising a suspect that he is free to end an interview does not have the same significance in the prison context as it does in other circumstances. See *United States v. Ellison*, 632 F.3d 727, 729 (1st Cir. 2010) (Souter, J.) (“Even when he is given the option to end the interrogation as he chooses, [a prison inmate] is not in the position of a suspect who is free to walk away and roam around where he pleases.”).

This Court could add another category to those recognized in *Shatzer*, *Perkins*, and *Berkemer* by holding that notwithstanding the restrictions on freedom of movement to which all inmates are subject, inmates who would otherwise be in custodial interrogations are *not* in custody if they are first told that they can end the interview—which essentially amounts to a partial *Miranda* warning. But such a holding would be a step in the direction of the case-by-case approach that this Court has thus far eschewed, and would prompt difficult questions. What if the officers’ actions undermine their verbal assurances? Or if they tell the suspect not that he is free to leave, but merely that he does not have to speak to them? Or if, as in this case, a suspect is told that he is free to leave the interview at any time, but doing so requires waiting with the officers for 20 minutes while a prison guard is summoned to escort him back to his cell?

Rather than inviting these difficult inquiries, the Court should simply adhere to the rule established by *Mathis* and *Shatzer*: “When,” as here, “a prisoner is removed from the general prison population and taken

to a separate location for questioning” about an unrelated offense by officers from outside the prison, that inmate is in *Miranda* custody for the duration of that “interrogative custody.” *Shatzer*, 130 S. Ct. at 1225 n.8.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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