No. 02-1684

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL YARBOROUGH, Warden of California State Prison—Los Angeles County, *Petitioner,*

v.

MICHAEL ALVARADO, *Respondent.*

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

PETITIONER'S REPLY BRIEF ON THE MERITS

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Under 28 U.S.C. § 2254(d), habeas corpus relief was permitted in this case only if the state court's adjudication of respondent Michael Alvarado's claim was "contrary to" or an "unreasonable application of" the constitutional law "clearly established" by the holdings of this Court's precedents. The Ninth Circuit, however, nullified Alvarado's state criminal judgment because the California Court of Appeal had failed to "extend" the holdings of this Court's *Miranda*[1] precedents in a way that, the Ninth Circuit acknowledged, this Court had never done.

Alvarado's merits brief, perhaps recognizing the difficulty of defending the Ninth Circuit's interpretation of § 2254(d) to allow federal habeas corpus review of state-court failures to alter Supreme Court precedent by "extending" it, emphasizes instead that the result below was right for other reasons. In Alvarado's view, this Court's precedents clearly establish that a court must consider the effect of a subject's age and experience on his perception in determining whether he is in "custody" for *Miranda* purposes. His defense of the Ninth

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1. *Miranda v. Arizona*, 384 U.S. 436 (1966).

Circuit opinion on this ground, however, evaporates in light of this Court's many *Miranda* precedents over four decades, none of which has ever stated, let alone held, that such subjective factors must be considered as well as the objective, external indicia of custody. Nor do Alvarado or his supporting amicus briefs offer any workable standard as to how a police officer should assess the effect of a suspect's "juvenile status" in determining "custody." *See* pages 14-17, post.

The *amicus curiae* brief of the National Association of Criminal Defense Lawyers (NACDL Amicus Br.) proclaims that, if the State's challenge to the Ninth Circuit's interpretation of § 2254(d) succeeds, it will be the end of federal habeas corpus review for state prisoners. NACDL Amicus Br. 11. In presenting this argument, amicus NACDL concentrates its attack on a straw man rather than on the argument actually presented in the opening brief of petitioner Michael Yarborough (Warden). In any event, amicus NACDL's analysis of the statute cannot be reconciled with § 2254(d)'s language or the fundamental habeas corpus reform it was intended to bring about.

I.

SECTION 2254(d) DOES NOT ALLOW HABEAS RELIEF BASED ON THE LOWER FEDERAL COURT'S CONCLUSION THAT THE STATE COURT FAILED TO EXTEND THIS COURT'S HOLDINGS TO A NEW CONTEXT

A. Applying "Clearly Established Federal Law, As Determined By The Supreme Court" Does Not Include Extending This Court's Precedents To A New Context

1. In contrast with the arguments pressed by Alvarado and amicus NACDL, the Warden's position lies at the point where Congress struck the policy balance in restricting habeas corpus review of state criminal judgments by the lower federal

courts. As the Warden has argued, the essential provisions of § 2254(d)'s deferential standard of review combine to rule out any notion that the federal court might grant relief by extrapolating from this Court's precedents an "extended" rule of law that this Court itself has never adopted. *See* Pet'r Br. 10-24. Such an "extension" by the lower federal court changes the original rule as set out in this Court's holdings, and therefore cannot already have been "clearly established," by this Court, at the time of the earlier state-court adjudication of the prisoner's claims. *See* Pet'r Br. 15-16.

Nor do § 2254(d)'s exceptions admit of any such authority to invoke "extensions" of law retroactively in habeas corpus cases. The statutory exception for state-court misinterpretations of the law that are "contrary to" this Court's holdings provides no such grant of authority. It cannot be said that a state court has contradicted a pronouncement of a constitutional rule of law by this Court if this Court has never pronounced it, even though a circuit court of appeals might seek to pronounce it instead. The "unreasonable application of * * * law" provision of § 2254(d) does not support any such power either. It is implausible to conclude that Congress—having limited the exception for misinterpretations of law to those so "diametrically different" as to be "contrary to" this Court's clear precedent—would in the very next words of the statute undermine that policy under the rubric of an exception for unreasonable "applications" of that law to the individual facts of a given case. A true "application" of the law to the facts is very different from "extending" or otherwise altering the rule of law itself in the process.

2. Alvarado and amicus NACDL are mistaken in suggesting that the Warden considers "clearly established Federal law, as determined by the Supreme Court," to be the result of "perfunctorily applying holdings in previous cases to virtually identical fact patterns" (Resp. Br. 41) or only specific bright-line rules (NACDL Amicus Br. 9-11). The Warden has never argued that § 2254(d)'s restriction on habeas corpus

invariably prevents relief where "clearly established Federal law, as determined by the Supreme Court" is applied to fact patterns different from those that gave rise to this Court's articulation of the law in its relevant precedents.

Amicus NACDL also argues that rules that address a wide range of fact patterns necessarily apply to novel contexts. NACDL Amicus Br. 11. Alvarado and amicus NACDL do not recognize that this Court's rules vary in their nature as to the factual contexts that they are intended to address. Some are very specific themselves; others are general and designed to evaluate myriad disparate facts that might give rise to a specific claim. *See* Pet'r Br. 20-21. Straightforward applications of rules of general application will not result in "extensions to novel contexts" merely on account of the variations in the facts and evidence of each new case. *Cf. Wright v. West*, 505 U.S. 277, 308-09 (1992) (Kennedy, J., concurring).

Nevertheless, under the guise of reviewing the reasonableness of a state court's application of a rule of general application, a federal habeas court might end up improperly adopting an extension of Supreme Court precedent to a novel setting. As ably demonstrated in the Brief *Amicus Curiae* of the Criminal Justice Legal Foundation in Support of Petitioner (CJLF Amicus Br. 21), *Bell v. Cone*, 535 U.S. 685, 693 (2002), serves as an illustration. Under the "unreasonable application" rubric, the Sixth Circuit improperly changed the *Strickland* rule by engrafting on it a sub-rule condemning waiver of final argument as per se incompetence. *See Strickland v. Washington*, 466 U.S. 668 (1984). The Sixth Circuit also subtly changed the *Cronic* rule so that its presumption of prejudice would apply to any discrete act by counsel in failing to challenge the prosecution's case at a given point of the trial rather than to failures so pervasive with respect to the entire trial that they rose to a level to justify imposition of the presumption without any showing of affect on the result. *See United States v. Cronic*, 466 U.S. 648 (1984). Under the cover of reviewing for

"unreasonable application," it had changed the rules from those that this Court had clearly established.

Likewise, a federal court would err under § 2254(d) if, in the course of a reviewing a state court's application of the *Jackson v. Virginia* rule for testing the sufficiency of evidence to support a criminal conviction, it extended or otherwise changed the rule of review itself so as to disqualify certain evidence from consideration or to compel a somewhat different analysis for different crimes. *See* CJLF Amicus Br. 21; *Jackson v. Virginia*, 443 U.S. 307 (1979).

3. Similarly, for the phrase "clearly established Federal law, as determined by the Supreme Court" to have any meaning, a federal habeas court must not overly-generalize this Court's holdings. This Court's holdings must be defined at the appropriate level of specificity before a court can determine if it was clearly established. *Taylor v. Withrow*, 288 F.3d 846, 855 (CA6) (Boggs, J., dissenting), *cert. denied*, 537 U.S. 1007 (2002); *cf. Wilson v. Layne*, 526 U.S. 603, 615 (1999) (a constitutional right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was "clearly established law" in qualified immunity cases for 42 U.S.C. § 1983 claims); *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (stating "[I]f the test of 'clearly established law' were to be applied at this level of generality * * * * [p]laintiffs would be able to convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.").

Falling into this trap in this case, the Ninth Circuit determined that "the relevant legal principle here, amply supported by Supreme Court precedent, is that juvenile defendants are accorded heightened procedural safeguards commensurate with their age and experience." Pet. App. A23. Amicus NACDL, also, states that the clearly established federal law is "due process jurisprudence." NACDL Amicus Br. 25. Interpreting "clearly established law" at such a high level of

generality, however, would render the central role of § 2254(d) in restricting federal-court review a nullity.

B. This Court Should Resolve Whether § 2254(d) Allows Any Exceptions For Instances In Which The State Court Refrains From "Extending" This Court's Holdings To A Novel Context

1. Alvarado argues that this Court in *Ramdass v. Angelone*, 530 U.S. 156 (2000), "adopted the extension test as part of its settled § 2254(d)(1) unreasonable application law." Resp. Br. 42; *see* NACDL Amicus Br. 6-9 (asserting *Ramdass* answered the question left open by *Williams v. Taylor*, 529 U.S. 362, 408-09 (2000)). *Ramdass,* however, did not resolve the issue, which this Court had declined to address in *Williams.*

In *Williams*, this Court stated:

> The Fourth Circuit also held in *Green* [*v. French*, 143 F.3d 865 (CA4 1998)] that state-court decisions that unreasonably extend a legal principle from our precedent to a new context where it should not apply (or unreasonably refuse to extend a legal principle to a new context where it should apply) should be analyzed under § 2254(d)(1)'s "unreasonable application" clause. See 143 F. 3d, at 869-70. Although that holding may perhaps be correct, the classification does have some problems of precision. Just as it is sometimes difficult to distinguish a mixed question of law and fact from a question of fact, it will often be difficult to identify separately those state-court decisions that involve an unreasonable application of a legal principle (or an unreasonable failure to apply a legal principle) to a new context.

Williams, 529 U.S. at 408. This Court then concluded that, "[t]oday's case does not require us to decide how such

'extension of legal principle' cases should be treated under § 2254(d)(1)." *Id.* at 408-09.

After *Williams,* the plurality opinion in *Ramdass* described § 2254(d)'s standard of review "as explained in Justice O'Connor's opinion for the Court in *Williams v. Taylor*, 529 U.S. 362, 412-413." *Ramdass,* 530 U.S. at 166. This description apparently served as a mere recapitulation of *Williams* rather than an unexplained resolution of the issue *Williams* explicitly had left open. In any event, the Court's reference to "extension" in its description of § 2254(d)'s standard of review played no role in the *Ramdass* decision, for the Court did not ultimately conclude that the state court had unreasonably refused to extend the governing legal principle. Nor did the *Ramdass* plurality discuss the "problems of precision" alluded to in *Williams*, or give guidance as to how to identify a state court decision that involves an unreasonable application of a legal principle to a new decision. The *Ramdass* plurality simply did not resolve whether § 2254(d)'s unreasonable application prong includes an unreasonable extension of a legal principle to a new context.

2. Alvarado mistakenly asserts that "all of the federal courts of appeal have referenced, even if in some instances they have not formally adopted, the 'extension' prong of the 'unreasonable application' clause of § 2254(d)(1)." Resp. Br. 42-43 & n.40; *see* NACDL Amicus Br. 8 (stating "eleven federal court of appeals have agreed with the *Ramdass* plurality"). Other than the Ninth Circuit, only two courts of appeal have actually held that extending or refusing to extend Supreme Court precedent can constitute an unreasonable application of federal law. *See Kennaugh v. Miller*, 289 F.3d 36, 45 (CA2), *cert. denied*, 537 U.S. 909 (2002); *Taylor*, 288 F.3d at 852-53; *but see Hawkins v. Alabama*, 318 F.3d 1302, 1306-07 n.3 (CA11 2003) (stating that the question of when a state court's refusal to extend a legal principle would constitute, under AEDPA, an unreasonable application of federal law is

unsettled and criticizing the Ninth Circuit's decision in the instant case).

Without addressing how extension of legal principle cases should be treated under § 2254(d), a majority of the circuits merely refer to *Williams*' extension language. But, as explained above, *Williams* did not resolve the question of how "extension of legal principle cases" should be treated under § 2254(d). 529 U.S. at 408-09. Accordingly, the references to extension of legal principle cases by these courts do little to help resolve this issue.

C. The *Teague* Doctrine Supports The Theory That An Extension Of Supreme Court Precedent To A New Context Is Not Clearly Established Federal Law As Determined By The Supreme Court

1. Alvarado argues that even in the *Teague* new rule context, this Court has recognized that an improper "new" rule differs from a proper extension or application of a recognized old one. Resp. Br. 40; *see* NACDL Amicus Br. 14-15; *Teague v. Lane*, 489 U.S. 288 (1989). Alvarado's and amicus NACDL's understanding of the *Teague* cases they cite is incorrect.

This Court stated in *Stringer v. Black*, 503 U.S. 222 (1992): "If * * * the [cited prior decision] did not announce a new rule, it is necessary to inquire whether granting the relief sought would create a new rule because the prior decision is applied in a novel setting, thereby extending the precedent." *Id.* at 228 (citing *Butler v. McKellar*, 494 U.S. 407, 414-15 (1990)). This statement reflects this Court's teaching in previous *Teague* cases about extensions of old rules in novel settings as new rules. This Court asked and answered the pertinent question in *Saffle v. Parks*, 494 U.S. 484, 488 (1990): "As we recognized in *Butler* * * *, the question [of whether we announce a new rule when a decision extends the reasoning of our prior cases]

must be answered by reference to the underlying purposes of the habeas writ." This Court stated:

> Because the leading purpose of federal habeas review is to "ensur[e] that state courts conduct criminal proceedings in accordance with the Constitution as interpreted at the time of th[ose] proceedings," [*Saffle*, 494 U.S. at 488], we have held that "[t]he 'new rule' principle . . . validates reasonable, good-faith interpretations of existing precedents made by state courts." [*Butler*, 494 U.S. at 414]. This principle adheres even if those good-faith interpretations "are shown to be contrary to later decisions." [*Saffle*, 494 U.S. at 488].

Graham v. Collins, 506 U.S. 461, 467 (1993).

2. Amicus NACDL argues that *Stringer* itself extended the holding of *Godfrey v. Georgia*, 446 U.S. 420 (1980), to a novel context. NACDL Amicus Br. 14-15. That is not so. The clearly established rule applicable in *Stringer* was the proscription against considering vague aggravating factors in determining a sentence of death. The *Stringer* Court simply determined, contrary to the State of Mississippi's argument, that the Mississippi death-penalty scheme in fact involved consideration of the pertinent aggravating factor in sentencing. 503 U.S. at 233-36. A rule is not extended to a new context when a court simply finds that the context in fact is the very one the rule explicitly governs.

Stringer, indeed, serves to refute amicus NACDL's argument that *Teague* allows extensions of precedent into novel contexts. In mandating the inquiry, *Stringer* apparently recognizes that a "new rule" is created where "the prior decision is applied in a novel setting, thereby extending the precedent." *Id.* at 228; *see O'Dell v. Netherland*, 521 U.S. 151, 162 (1997) (holding that a "step" would constitute a new rule); Pet'r Br. 14-15. Even if this Court had left open the theoretical possibility that an extension of a rule to novel context might not result in an impermissible "new" rule, this Court has never

recognized an extension of an old rule in a novel setting to be anything but a new rule.

Finally, beyond *Teague*, § 2254(d)(1) limits the authority of the federal habeas courts further. The touchstone of "clearly established" law is comprised of only the holdings of this Court rather than the interpretative jurisprudence of other state or lower federal courts. *Williams*, 529 U.S. at 412. "Extensions" are not contemplated by the § 2254(d) exceptions.

D. The California Court Of Appeal's Adjudication Was Neither Contrary To Nor An Unreasonable Application Of Clearly Established Supreme Court Precedent

Alvarado contends that this Court need not decide how "extension of legal principle" cases should be treated under § 2254(d) because the California Court of Appeal failed to identify what the law is and to reasonably apply the established law to the relevant facts. Resp. Br. 39. But the Ninth Circuit, even in granting relief, recognized that the state court had identified the correct legal standard for making an "in custody" determination. Pet. App. A7. The Ninth Circuit also acknowledged that no Supreme Court case has addressed whether a juvenile's age and experience need to be considered for a "custody" determination. Pet. App. A6, A22. The court then expressly rested its grant of habeas relief on the theory that a state court's decision can involve an "unreasonable application" of federal law if it extends, or fails to extend, a clearly established legal principle to a new context in a way that is objectively unreasonable. Pet. App. A23-A24 (stating that "[o]ur analysis involves the extension of the principle that juvenile status is relevant to the conduct of a custodial interrogation to the further determination whether a defendant is, in fact, 'in custody.'"); *see* Pet. App. A7 (stating "on the facts of this case, proper consideration of [juvenile status] compels a different outcome even under the highly deferential standard of review mandated by the AEDPA."). The issue of how

"extension of legal principle cases" should be treated under § 2254(d)—one of the two issues on which this Court granted certiorari—is properly before this Court.

Alvarado contends that the state court failed to consider the totality of the circumstances identified in this Court's prior decisions. Resp. Br. 32-35. He and the amici who support him frequently refer to alleged circumstances that, it turns out, are unsupported by evidence and that were mentioned only in his attorney's arguments during the motion hearing, specifically: that he asked, "Can't somebody come in with me or be here with me?"; that his parents asked and were denied permission to join the interview; and that an officer stated, "What do we have here; we are going to question a suspect." *See, e.g.*, Resp. Br. 2, 18, 20, 34; NACDL Amicus Br. 2; Brief of Juvenile Law Center, et al. as *Amici Curiae* in Support of Respondent (JLC Amicus Br.) 11, 22. As the Warden has explained, these kinds of circumstances are irrelevant to the ultimate inquiry of whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest, because they are largely subjective. *See California v. Beheler*, 463 U.S. 1121, 1125 (1983); Pet'r Br. 29-36. Moreover, in support of these allegations, Alvarado cites only his attorney's arguments at the motion hearing and his own habeas petition allegations. *See, e.g.*, Resp. Br. 2 (citing J.A. 49 [habeas petition] and 185-86 [defense attorney's argument at motion hearing].) Alvarado, in fact, never introduced any evidence of these alleged circumstances. J.A. 167-97.

In a similar vein, Alvarado argues that it is untenable to say that his interview was not police-dominated because he was alone in an interrogation room in a police station with an armed homicide detective. Resp. Br. 18 & n.10. But there was no evidence in the record that Detective Comstock was armed or that any weapon was displayed during the interview. *See* J.A. 72-165, 331-39, 350-54, 437-39.

Alvarado's argument, that the California Court of Appeal's opinion demonstrates that the court did not consider the

remaining circumstances, *see* Pet. App. C12-C17, resembles the argument this Court rejected in *Early v. Packer*, 537 U.S. 3, 123 S. Ct. 362 (2002). In *Early*, the Ninth Circuit charged that the state court had failed to apply the totality of the circumstances test of *Lowenfield v. Phelps*, 484 U.S. 231 (1988), because the state court "simply mentioned" three particular incidents in its analysis, failed to consider other critical facts, and failed to consider the cumulative impact of all the significant facts. *Early*, 123 S. Ct. at 365. Rejecting such criticism, this Court noted that the state court's opinion set forth many facts and circumstances beyond the three incidents, including two critical facts that the Ninth Circuit said it failed to consider. This Court stated:

> The contention that the California court "failed to consider" facts and circumstances that it had taken the trouble to recite strains credulity. The Ninth Circuit may be of the view that the Court of Appeal did not give certain facts and circumstances adequate weight (and hence adequate discussion); but to say that it did not *consider* them is an exaggeration.

Id. (emphasis in original).

Likewise, the California Court of Appeal described the circumstances of the interview. Pet. App. C12-C17. The court's opinion, not illogically, focused on Alvarado's main contention—that the case was controlled by *People v. Aguilera*, 51 Cal. App. 4th 1151, 59 Cal. Rptr. 2d 587 (1996), which the state court found distinguishable from Alvarado's case. Pet. App. C15-C17. Alvarado might disagree with the weight given to the facts; but it is inaccurate to state that the California Court of Appeal did not consider them. *See Early*, 123 S. Ct. at 365.

As explained in the Warden's opening brief, the California Court of Appeal was not required to consider Alvarado's age and experience. Pet'r Br. 29-39. Alvarado argues, based on what he calls the "uniformity of state court decisions,"[2/]

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2. The Ninth Circuit noted that eleven state court decisions, mostly

decisions of this Court in similar contexts, and the "generally understood meaning of reasonable person," that it was objectively unreasonable for the state court to not have considered his juvenile status. Resp. Br. 38. Under § 2254(d)(1), however, the California Court of Appeal was required only to reasonably apply clearly established federal law, as determined by this Court. The California Court of Appeal was not bound to follow decisions of other state courts or decisions from other legal contexts that could be, at best, dicta for a "custody" determination.

II.

A JUVENILE'S AGE AND EXPERIENCE ARE IRRELEVANT FOR DETERMINING "CUSTODY" FOR *MIRANDA* PURPOSES

A. *Miranda* Requires Warnings Only When The Individual Is Under Formal Arrest Or Restrained To The Degree Associated With A Formal Arrest

1. The *Miranda* Court made it clear that warnings are required only when there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *Miranda*, 384 U.S. at 444. Alvarado argues that juvenile status is relevant to determining whether a juvenile is in custody because "juveniles are never at complete liberty to go about their business and, when not in the custody of their parents, are always in someone else's temporary custody." Resp. Br. 20; *see also* JLC Amicus Br. 7. He contends that "the state court

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intermediate courts, have ruled that juvenile status is relevant to the "in custody" determination. Pet. App. A19-A20 n.5. Alvarado adds two states to the Ninth Circuit's list. Resp. Br. 26-27 n.26. Amicus NACDL asserts that "not less than twenty-four jurisdictions" consider age of a suspect in determining custodial status, yet cites to court decisions from only five states. NACDL Amicus Br. 29.

completely ignored that [Detective] Comstock directly involved Michael's parents in the *transfer of custody* of Michael *from his parents* to the police at the station house." Resp. Br. 20 (emphasis added); *see also* Resp. Br. 27 n.27 (citing to California Family Code and California Welfare and Institutions Code regarding parental custody).

Alvarado conflates two legal terms with fundamentally different meanings—"custody" as used in family law context and "custody" for *Miranda* purposes. In the family law context, for example, "joint legal custody" means that both parents share the right and responsibility to make the decisions relating to the health, education, and welfare of a child. Cal. Fam. Code § 3003; *see also* Cal. Fam. Code § 3004 (definition of "joint physical custody"). This type of custody is nothing like formal arrest or its equivalent as "custody" is defined by *Miranda.* Alvarado is surely not arguing that parents have their children under formal arrest or that parents are agents of law enforcement. The logical conclusion of Alvarado's argument is that all juveniles need to be advised of their *Miranda* rights, not only by law enforcement officers, but also by their parents, school officials, and other temporary guardians.

2. Alvarado and the amici who support him urge that the *Miranda* "custody" determination should be modified for juveniles because "age matters" in other areas of law. Resp. Br. 23-25; NACDL Amicus Br. 22-23 & n.6; JLC Amicus Br. 4-11 (arguing that age matters for voluntariness of confessions, Fourth Amendment seizure analysis, school settings, random drug testing of student athletes, abortion rights, civil commitment, and sale of obscene material). Upon closer scrutiny, this broad argument is unpersuasive because while age may matter in some other legal contexts, Alvarado and his amici fail to explain how age and experience have any bearing on whether a person is in custody.

For example, Alvarado argues that this Court has recognized in the Fourth Amendment seizure analysis that the juvenile status should be taken into account. Resp. Br. 24

(citing *Kaupp v. Texas*, 583 U.S. 626, 123 S. Ct. 1843 (2003)). While the decision in *Kaupp* mentions that the defendant was seventeen years old, it is unclear whether the Court found the age to have been probative for Fourth Amendment seizure analysis. The *Kaupp* Court found evidence of every one of the probative circumstances mentioned by Justice Stewart in *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), which do not include age and experience. *See Kaupp*, 123 S. Ct. at 1846.

In any event, a seizure under the Fourth Amendment is not necessarily custody for *Miranda* purposes. A seizure of a person within the meaning of the Fourth Amendment occurs when, "taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Kaupp*, 123 S. Ct. at 1845. At first blush, this analysis appears similar to the "in custody" inquiry set forth in *Thompson v. Keohane*, 516 U.S. 99, 112 (1995): "given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." These two inquiries, however, are not interchangeable. *But see, e.g.*, NACDL Amicus Br. 27-28 (replacing references in quotations to the Fourth Amendment with the Fifth Amendment). In contrast to the seizure analysis for the Fourth Amendment, the "ultimate inquiry" for determining "custody" asks "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Thompson*, 516 U.S. at 112. This ultimate inquiry distinguishes *Miranda*'s custody determination from the seizure analysis under the Fourth Amendment. *See Berkemer v. McCarty*, 468 U.S. 420, 438-40 (1984) (noting that typical traffic stops and stops pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) are seizures under the Fourth Amendment, but are not like formal arrests and do not require warnings under *Miranda)*; *see* Resp. Br. 24-25 (conceding that this Court has recognized that circumstances that constitute seizure under the Fourth Amendment do not necessarily constitute custody for *Miranda*

purposes). The contrast between seizure and formal arrest illustrates that age and experience are irrelevant for a custody determination under *Miranda*.

B. Age And Experience Are Not Relevant Considerations In Determining Whether A Juvenile Is "In Custody"

Alvarado asserts that age and experience "go directly to the 'in custody' determination." Resp. Br. 16. He and amici NACDL and JLC, however, do not explain how age and experience are relevant to whether a person is under formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The modification of the "in custody" determination for juveniles proposed by Alvarado would be a major shift in *Miranda* jurisprudence.

Alvarado argues that "restraint can be psychological as well as physical." Resp. Br. 8, 14-15 n.7. He reasons that limiting custody inquiry to "physical" indicia of arrest would be contrary to this Court's concerns. Resp. Br. 14-15 n.7. His argument is fundamentally at odds with the very definition of "custody" which is "formal arrest or otherwise deprived of his *freedom of action* in any significant way." *See Miranda*, 384 U.S. at 444 (emphasis added). Furthermore, this Court has held that psychological restraint is not "custody." In *Beckwith v. United States*, 425 U.S. 341, 345 (1976), the defendant argued that being the focus of the investigation placed him under psychological restraints that were equivalent of custody. This Court did not consider the subjective psychological restraint to be an indicia of arrest, and stated that the defendant "hardly found himself in the custodial situation described by the Miranda Court as the basis for its holding." *Id.* at 347.

Alvarado argues that, under the totality of the circumstances, a reasonable person in his position would not have felt free to terminate the interrogation and leave. Resp. Br. 32-35. But under his interpretation, a "reasonable person in his position" would in effect be Alvarado, himself. The

"reasonable person" becomes nonexistent and the test transforms from an objective test to a subjective test of whether the specific person felt free to terminate the interrogation and leave. A suspect's state of mind, however, has no substantial relevance to the indicia of custody. *Berkemer*, 468 U.S. at 442 n.35.

C. There Remains A Distinction Between The Voluntariness Of A Confession And *Miranda* Requirements

Amicus NACDL argues that, because there are concerns common to both voluntariness and custody, age and experience are therefore relevant both to voluntariness and to custody. NACDL Amicus Br. 18, 20; *see* Resp. Br. 23 (asserting that juvenile status creates a vulnerability that affects custody). But this Court has repeatedly held that *Miranda* serves a different purpose from the due process voluntariness test. *Dickerson v. United States*, 530 U.S. 428, 434-35 (2000); *Berkemer,* 468 U.S. at 433 n.20. Amicus NACDL asserts, "age of a suspect is an important factor in determining whether the conduct of the government is objectively coercive." NACDL Amicus Br. 20. While the due process voluntariness test is concerned with whether one's will has been overborne by coercion, *Miranda* is only concerned with one type of coercion—that associated with custody. *Miranda,* 384 U.S. at 444.

Amicus NACDL lists special vulnerabilities that juveniles might suffer: inexperience, less education, less intelligence, smaller size, and lack of independent finances that might be used to "confine" a juvenile. NACDL Amicus Br. 21-22. No case has held that any of these factors are relevant for a "custody" determination. Additionally, NACDL's rationale does not appear to be limited to juveniles as some adults share these same "special vulnerabilities." NACDL's list of special vulnerabilities also does not suggest any clear limitations as to the type of vulnerabilities that could be considered in a custody

determination. While a juvenile's age and experience well might be proper factors for determining the voluntariness of a confession, they bear no relationship with "custody" for *Miranda* purposes. *Compare with Stein v. New York*, 346 U.S. 156, 185-86 (1953) (characteristics of the accused relevant to determining the voluntariness of a confession include the accused's age, sophistication, prior experience with the criminal justice system, and emotional state), *overruled on other grounds by Jackson v. Denno*, 378 U.S. 368 (1964).

This case highlights the error of Alvarado's premise that a factor relevant to coercion is necessarily relevant to the question of custody. At trial, Alvarado agreed that his participation in the interview "was all voluntary on [his] part" and he did not feel coerced or threatened in any way." J.A. 439. If his age and experience had no impact on the voluntariness of his confession, it seems incongruent that he should be able to claim that his age and experience bore any relationship as to whether he was in custody. Justice O'Connor's opinion in *Withrow v. Williams*, 507 U.S. 680, 709 (1993) noted:

> In case after case, the courts are asked on habeas to decide purely technical *Miranda* questions that contain not even a hint of police overreaching. And in case after case, no voluntariness issue is raised, primarily because none exists. * * * * While these questions create litigable issues under *Miranda*, they generally do not indicate the existence of coercion—pressure tactics, deprivations, or exploitations of the defendant's weaknesses—sufficient to establish involuntariness.

Withrow, 507 U.S. at 709 (O'Connor, J., concurring in part and dissenting in part). The risk that a juvenile might perceive that he or she is in custody based upon subjective factors is not addressed by modifying *Miranda*'s custody determination, but likely is properly addressed by determining whether the confession is voluntary.

Furthermore, *Miranda* does not dispense with the requirement that a confession be voluntary to be admitted into evidence. *Dickerson*, 530 U.S. at 444. "We do not suggest that compliance with *Miranda* conclusively establishes the voluntariness of a subsequent confession." *Berkemer*, 468 U.S. at 433 n.20. If a juvenile's will were overborne to render a confession involuntary, the confession would still be inadmissible, regardless of whether the juvenile was in custody to require *Miranda* warnings. Even if a juvenile defendant receives *Miranda* warnings and speaks, he or she may still assert that the statements were involuntary and thus inadmissible. *Dickerson*, 530 U.S. at 444. Law enforcement officers who fail to give *Miranda* warnings take the additional risk that the juvenile's statements will ultimately be found to be involuntary, thus requiring the suppression of the statements.

D. Including A Juvenile's Age and Experience For "Custody" Determinations Would Blur *Miranda* Advisement Guidelines For Law Enforcement Officers

Alvarado argues that law enforcement's duties will remain the same. He and amici JLC argue that law enforcement officers already are required to take some action upon learning that an individual is under the age of eighteen. Resp. Br. 29-30; JLC Amicus Br. 23-25. Alvarado ignores the impracticality of obtaining such information by law enforcement officers while on the scene of a crime. His argument also presumes that the individual will be forthright about his or her age and criminal history.

Even assuming that an officer is able to accurately obtain such information, Alvarado misses the point that an officer will be required to assess the significance of that age and experience as to custody. As explained in the Brief for the United States as *Amicus Curiae* Supporting Petitioner at page 19, such an assessment would be difficult, given the wide variety in physical, intellectual, emotional, and social development of

juveniles. In *New York v. Quarles*, 467 U.S. 649, 658 (1984), this Court recognized the importance of providing a "workable rule 'to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" It cannot be expected of officers that they master juvenile psychology and be able to calibrate their decisions of whether to give *Miranda* warnings. *Miranda*'s goal of providing effective guidance to law enforcement should not be forgotten. Accordingly, a juvenile's age and experience should not be considered in determining "custody" for *Miranda* purposes.

CONCLUSION

For these reasons and those stated in the Warden's opening brief, the judgment of the court of appeals should be reversed.

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