No. 09-11121

IN THE
Supreme Court of the United States

J.D.B.,
Petitioner,
v.
STATE OF NORTH CAROLINA,
Respondent.

On Writ of Certiorari to the Supreme Court of North Carolina

BRIEF OF INDIANA, ALABAMA, ARKANSAS, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, GUAM, HAWAII, IDAHO, ILLINOIS, IOWA, KENTUCKY, LOUISIANA, MAINE, MICHIGAN, MONTANA, NEBRASKA, NEVADA, OHIO, OKLAHOMA, PENNSYLVANIA, PUERTO RICO, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VIRGINIA, WASHINGTON, AND WYOMING AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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Question Presented

Must a court consider the age of a juvenile in determining whether he is "in custody" for purposes of *Miranda v. Arizona*?

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Interest of *Amici* States

The *amici* States are the front lines of the nation's criminal investigations and are virtually solely responsible for juvenile justice. As such, States, their law enforcement officers, and their courts are primarily entrusted with implementation of this Court's decisions in *Miranda v. Arizona* and its progeny. The States, therefore, have a unique interest in a clear, informed, and—above all—fair body of constitutional law regarding the interactions between law enforcement and the citizenry. The States have a strong interest in promoting policies that strike a reasonable balance among three competing concerns created by this case: law enforcement's need to question juveniles appropriately, the burden placed on police by special and complex rules, and desire to protect juvenile rights in interactions with law enforcement.

To that end, the *amici* States urge the Court to resist expanding the custody inquiry and instead to reaffirm the well-established and understood rules for testing *voluntariness* as the most effective avenue to adjudicate whether and how a person's age affected statements to police.

Summary of Argument

Custody, for *Miranda* purposes, has always been assessed through an objective standard that looks to the circumstances of the interrogation but does not take into account personal characteristics of the interviewee even if those characteristics might impact the person's subjective perception of his

freedom. Subjective factors such as experience and intelligence are often unknown to police officers. Regardless, police are ill-equipped to make snap assessments as to how age (or other factors that cannot be meaningfully distinguished from age) will impact a person's belief that he is free to leave.

Age is not an effective proxy for assessing custody because it is shorthand for these other subjective matters that are supposed to be irrelevant to the analysis. A situation that is objectively non-custodial does not become custodial simply because the age of the subject changes. Moreover, age does not need to be used as a proxy for location in juvenile-police interactions that occur at school. The location of the interrogation is a factor that is considered in the custody analysis; thus, the school environment properly may be considered in the custody analysis without regard to consideration of age.

Age and maturity are already facts relevant in assessing the voluntariness of a statement, and courts are better suited to examine subjective considerations in the voluntariness context. Many states provide additional protections for juveniles subjected to interrogation, but those protections almost uniformly only apply to juveniles who are clearly in custody. The existence of these protections is irrelevant to assessing whether the juvenile is in custody, and states generally have not enacted measures defining custodial status based on age. Expanding *Miranda* custody to subsume subjective considerations that are already accounted for by the

voluntariness analysis will thus result in additional confusion for police officers and costs to society without resulting in any offsetting benefit to society.

Argument

I. Determining Whether an Interrogation is Custodial has Always Depended Upon Objectively Discernible, Even Obvious, Circumstances

Recently, in *Yarborough v. Alvarado*, the Court explained that none of its decisions have permitted courts to weigh subjective considerations, such as the significance of a person's age, when determining whether a person is "in custody" for purposes of determining whether *Miranda* warnings are necessary. 541 U.S. 652, 666-67 (2004). The Court therefore rejected, in the habeas context, the argument that a requirement that police consider a witness's age when deciding whether to administer *Miranda* warnings is a "clearly established" Fifth Amendment safeguard.

Quite to the contrary, for nearly 45 years the Court has held to the position that *Miranda v. Arizona* applies only when, as a matter of objectively discernible fact, police arrest a subject or authorities "otherwise deprive[] . . . his freedom . . . in any significant way." 384 U.S. 436, 478 (1966). That standard does not contemplate that *Miranda* warnings must be given where, even though objective evidence indicates the subject is free to leave, his subjective perceptions (owing to minority

age or other individual characteristics) tell him something else.

The purpose of the *Miranda* rule is to ensure that suspects know of the privilege against self-incrimination when being interrogated incommunicado. *Id.* at 445-458 (recounting the methods, purposes, and dangers of modern interrogation techniques). "That atmosphere is said to generate 'inherently compelling 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.'" *Illinois v. Perkins*, 496 U.S. 292, 296 (1990) (quoting *id.* at 467). It is that "intimate connection between the privilege against self-incrimination and police custodial questioning" that requires special procedures to ensure protection of a person's Fifth Amendment rights. *Miranda*, 384 U.S. at 458; *see Dickerson v. United States*, 530 U.S. 428, 434-35 (2000).

But the Court has steadfastly defined "custody" for *Miranda* purposes to mean only arrest or its functional equivalent, as determined by objectively discernible circumstances. "The initial determination of custody depends on the objective circumstances of interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994) (per curiam). Courts examine the entirety of "'the circumstances surrounding the interrogation'" and determine "'how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her

freedom of action.'" *Id.* at 322, 325. "Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve 'the ultimate inquiry': 'was there a formal arrest or restraint of freedom of movement of the degree associated with a formal arrest.'" *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)); *see also Yarborough*, 541 U.S. at 664-65; *Dickerson*, 530 U.S. at 444; *Stansbury*, 511 U.S. at 326; *Perkins*, 496 U.S. at 296-97; *Berkemer v. McCarty*, 468 U.S. 420, 434-35, 439-40 (1984); *Minnesota v. Murphy*, 465 U.S. 420, 431-33 (1984); *Oregon v. Mathiason*, 429 U.S. 492, 494-95 (1977) (per curiam); *Beckwith v. United States*, 425 U.S. 341, 347 (1976); *Mathis v. United States*, 391 U.S. 1, 4-5 (1968).

This rule ensures that police need not "'gues[s] as to [the circumstances] at issue before deciding how they may interrogate the suspect.'" *Yarborough*, 541 U.S. at 667 (quoting *Berkemer*, 468 U.S. at 431). "Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." *Berkemer,* 468 U.S. at 437.

Petitioner and his *amici* invite the Court to depart from these precedents and the doctrinal underpinnings that justify the *Miranda* rule by requiring for the first time that a subjective circumstance—a person's immaturity—be considered in determining whether custody exists. While the

question of a person's age seems objective (though without documentary proof even an educated guess is subjective), the actual consideration that Petitioners urge is the relative ability of the person being interrogated to reason and make intelligent judgments about whether to speak, and what to say, to police. A juvenile's maturity, intelligence, experience, and sophistication have nothing to do with "the objective circumstances of interrogation" but are rather "the subjective views harbored by . . . the individual being questioned." *Stansbury*, 511 U.S. at 323.

Nor do considerations of age and maturity represent the logical end of Petitioner's suggested subjective inquiry. Lower courts have already begun considering other subjective factors that do not inform the traditional custody determination. *See, e.g., Alvarado v. Hickman*, 316 F.3d 841, 847-49 (9th Cir. 2002) (evaluating whether custody existed by reference to the subject's experience with police), *rev'd by Yarborough*, 541 U.S. 652; *In re Jorge D.*, 43 P.3d 605, 608 (Ariz. Ct. App. 2002) (requiring consideration of age, maturity, and experience); *State v. Doe*, 948 P.2d 166, 173 (Idaho Ct. App. 1997) (same); *In re Joshua David C.*, 698 A.2d 1155, 1162 (Md. Ct. Spec. App. 1997) (holding that in the juvenile context courts must "apply a wider definition of custody" that includes "additional factors, such as the juvenile's education, age, and intelligence"). If a subject's age and maturity is relevant to the custody determination, there is no apparent principled reason not to consider other circumstances affecting individual perceptions such

as experience with police, intelligence, education, mental health, and parental support. None of these are objectively discernible or necessarily apparent to police and would become fodder for motions to exclude evidence on *Miranda* grounds. For that matter, even apparently non-custodial interrogations of adults might be subject to second-guessing based on later revealed questions of experience, intelligence, or developmental disabilities.

To muddy the custody waters with subjective judgments about a person's emotional, intellectual, and experiential sophistication would be to create an unworkable rule for police to administer—precisely the opposite result the Court avers that the *Miranda* rule represents. *See New York v. Quarles*, 464 U.S. 649, 658 (1984) (*Miranda* recognizes "the importance of 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."); *see also Yarborough*, 541 U.S. at 668-69 ("[T]he custody inquiry states an objective rule designed to give clear guidance to the police, while consideration of a suspect's individual characteristics-including his age-could be viewed as creating a subjective inquiry."). Law enforcement officers cannot reliably know an individual's state of mind, background, cognitive ability, or the host of other individual characteristics that could bear on a person's perception of custody. *Yarborough*, 541 U.S. at 668. Fair and effective law enforcement requires a clear and objective rule of custodial interrogation.

In this regard, there is no point in substituting age as a stand-in for location when it comes to interactions between juveniles and law enforcement that occur *at school*, contrary to Petitioner's and his *amici's* implicit suggestion. Location of the interview has always been a factor considered in the custody determination. *See, e.g., Yarborough,* 541 U.S. at 665 (noting that Alvarado had been interviewed at the police station). That the interview took place on school grounds is a legitimate objective factor that plays into the custody determination. Depending on the circumstances of the school, this factor may weigh in favor of custody or against it.[1] Many, if not all, of the purportedly coercive elements of the interview here—such as Petitioner's inability to leave school grounds, obligation to follow school rules, and the presence of the principal in his interview—arise from the location of the interview on school grounds rather than from the age of the juvenile.

Put another way, there does not appear to be a suggestion that if the same interview in this case

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[1] The compulsory nature of attendance does not automatically render students to be "in custody" for *Miranda* purposes. *See, e.g.*, *United States v. Crossley*, 224 F.3d 847, 861 (6th Cir. 2000) (holding that a suspect was not in custody when she was unexpectedly summoned to her military superiors' administrative office and ordered to go to a room where she was confronted by two FBI agents); *Commonwealth v. Eichinger*, 915 A.2d 1122, 1135 (Pa. 2007) (finding a suspect not to be in custody at his place of employment).

had occurred in front of Petitioner's house, his age would have made the interaction custodial. If that much is conceded, it becomes clear that the inquiry about custody in this case should focus on the impact of the school setting—an obvious factor easily evaluated by officers—rather than the subject's age or maturity.

Petitioner's approach would defeat the goal of a prophylactic rule easily applied by law enforcement in the field. Neither Petitioner nor his *amici* offer a "compelling justification" to depart from the "simplicity and clarity" of *Miranda*'s holding. *Berkemer*, 468 U.S. at 432.

II. Age and Maturity are Proper Considerations for Determining *Voluntariness*, not Custody-in-Fact

Fifth Amendment doctrine has already created a way for courts to evaluate whether a declarant's age should preclude the admissibility of statements to police: the baseline requirement that confessions be voluntary. That is, regardless whether the police have provided *Miranda* warnings, for a self-incriminating statement to police to be admissible, it must be given voluntarily. *See Dickerson*, 530 U.S. at 444 ("The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry."). Courts must consider the totality of the circumstances when evaluating whether a witness gave a statement to police

voluntarily, regardless of whether the witness was in custody at the time. *Gallegos v. Colorado*, 370 U.S. 49, 53-54 (1962); s*ee generally Haley v. Ohio*, 332 U.S. 596 (1948).

Courts are well-equipped to make such determinations that require a range of background information to make a deliberative decision. In contrast, law enforcement officers are required to make quick decisions, often based on the limited information before them in the interrogation context. Presumably, this is why the Court has "emphasized the virtues of a bright-line rule" flowing from *Miranda*. *Arizona v. Roberson*, 486 U.S. 675, 681 (1988). Therefore, the circumstances that have traditionally been used to determine custody are significantly different from age in that they look to the environment of the interaction between a person and a law enforcement officer, not the subjective faculties of the witness. *See Yarborough*, 541 U.S. at 667-68.

Age is not an effective proxy for restraint when determining custody because it is not a factor that may be easily evaluated by law enforcement officers in the field. Age may or may not correspond with maturity, intelligence, or sophistication. Determining the effect of age on a person is a complicated undertaking often requiring information from family, friends, educators, doctors, and others. Police cannot reliably know within the first moments of interaction with a person if age is indicative of

relative maturity, intelligence or sophistication.[2] Indeed, some juveniles and adolescents are particularly sophisticated while some adults are decidedly not. *C.f. Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999) ("There are cunning children and there are naïve adults.").

Determinations about voluntariness, however, are not made on-the-spot by police the way decisions about the need for *Miranda* warnings are. When required, police give *Miranda* warnings before questioning suspects, but they do not stop confessions mid-stream over concerns about voluntariness. The system depends on courts to address such concerns, and evidence concerning an individual's personal characteristics may be

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[2] In fact, many courts that have considered age in the determination of custody have provided law enforcement with no guidance on *how* age affects the determination. *See*, *e.g.*, *United States v. Erving L.*, 147 F.3d 1240, 1248 (10th Cir. 1998) (relying on a "reasonable juvenile" standard without explaining how it differed from a "reasonable adult" standard); *State v. Smith*, 546 N.W.2d 916, 923 (Iowa 1996) (holding it appropriate to consider age as a factor in determining custodial status without explaining how it should be considered); *In re Dalton B.B.*, 61 A.D.3d 1105, 1106 (N.Y. App. Div. 2009) (stating, without elaboration, that a "reasonable 15-year-old would have believed that his freedom was significantly restricted."); *In re L.M.*, 993 S.W.2d 276, 289 (Tex. App. 1999) (asking whether "a reasonable child of the same age would believe her freedom of movement was significantly restricted" without giving guidance as to what a "reasonable child" is).

presented to the court at length. Courts therefore have more information and can make a more deliberative decision about maturity and intelligence than police can at the moment of questioning. Police need clear and objective rules to use in the field, while more nuanced and complex rules can be employed by the courts.

Miranda itself identified the incommunicado nature of a stationhouse interrogation. *See Miranda*, 384 U.S. at 475-76. In a custodial situation, the person is confined without the ability to contact anyone for help and is at the mercy of law enforcement. The location of the interview, restraints on the person's movement, the number of officers, the size of room, and what the person is told by law enforcement all bear upon whether a reasonable person placed in that circumstance would feel a strong, almost overwhelming coercion to comply with whatever law enforcement asks. In this environment, in order to ensure the person knows that he may still resist law enforcement, the Court put the protections of *Miranda* in place. *See id.* at 476-79.

When a person is told that he is under arrest, handcuffed, and taken by police to the stationhouse, that person is in custody and it does not matter whether the person is 15 years old or 65 years old. *See Beheler*, 463 U.S. at 1125 ("Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving of Miranda protection, the ultimate inquiry is simply whether there is a "formal

arrest or restraint on freedom of movement" of the degree associated with a formal arrest."). Conversely, when a person is approached by a police officer in a public place and engaged in conversation, that person is not in custody and it does not matter whether the person is 15 years old or 65 years old. *See, e.g., Florida v. Royer*, 460 U.S. 491, 498 (1983) ("[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions."). Age does nothing to illuminate whether the circumstances surrounding the interview constitute *custody*.

III. States Typically Afford Special Protections to Juveniles Only *After* They are Clearly In Custody, not for Purposes of Determining *Whether* they are in Custody

Many states provide special protections for juveniles that adults do not receive, but in almost every state, those protections apply only once the juvenile is taken into custody or subjected to custodial interrogation.[3] That is, when juveniles are

[3] Some of the state statutes cited by Petitioner and his *amici* do not provide any additional protection for juveniles at all, but simply provide that any statement

placed in an inherently coercive environment and control of their basic liberties is placed in the hands of law enforcement, states afford additional protections to prevent their will from being overborne. But these protections are triggered *by* unquestioned custody; they do not provide special treatment for determining when custody exists. State procedures applying to juveniles who are in custody simply are not relevant to deciding whether those juveniles are in custody, which is the issue presented in this case.[4]

Many states require prompt parental notification whenever a child is taken into custody. *See, e.g.*, Alaska Stat. § 47.12.250; Fla. Stat. § 985.101; Ga. Code Ann. § 15-11-47; Haw. Rev. Stat. § 571-31; Idaho Code § 20-516; Iowa Code § 232.19; Me. Rev. Stat. tit. 15, § 3203-A(2); Minn. Stat. § 260B.176; Miss. Code Ann. § 43-21-303(3); Mont. Code Ann.

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that would be constitutionally inadmissible in an adult criminal proceeding is inadmissible against a juvenile, thereby applying the same standards to both juvenile and adult custodial interrogations. *See, e.g.*, Ga. Code Ann. § 15-11-7(b); N.D. Cent. Code § 27-20-27(2); Wash. Rev. Code § 13.40.140(8).

[4] As is discussed in the briefs of Petitioner, some of his *amici*, and Respondent, a minority of state courts have, as a matter of applying *Miranda*, considered age as a factor in determining custodial status, though others have rejected that approach. Such judicial attempts to answer the federal constitutional question presented in this case do not constitute *state* policies regarding whether to classify custody based on age.

§ 41-5-331(1)(b); N.Y. Fam. Ct. Act § 305.2; S.D. Codified Laws § 26-7A-15. This requirement does not place any limit on what interrogation may occur and serves purposes wholly unrelated to interrogation. Parental notification *after* a child is taken into custody says nothing about when a child is in custody for *Miranda* purposes.

Other statutes contain protections specifically directed toward custodial interrogations. Some states require *Miranda* warnings to be provided in language understandable to a child. *See, e.g.*, Ala. Code § 12-15-202(a); Ark. Code Ann. § 9-27-317(i)(2). Others require that the child also be advised, in addition to his *Miranda* rights, that he has the right to communicate with his parents or guardian before speaking to police or have them present during questioning. *See, e.g.*, Ala. Code § 12-15-202(b); Mo. Ann. Stat. § 211.059(1)(3). Still others provide the child with a right to contact his parents, *see, e.g.*, Miss. Code Ann. § 43-21-303(3); or prohibit the police from questioning the child if he expresses a desire to speak to his parents, *see, e.g.*, Ark. Code Ann. § 9-27-317(i)(2)(C). Some states prohibit the use of any statements made during custodial interrogation of a juvenile under a certain age unless his parent, guardian, or attorney was present during the questioning. *See, e.g.*, Colo. Rev. Stat. § 19-2-511; N.C. Gen. Stat. § 7B-2101(b); Okla. Stat. tit. 10A, § 2-2-301(A); *see also* Me. Rev. Stat tit. 15, § 3203-A(2-A). Others do not allow juveniles to waive their *Miranda* rights on their own but require waiver by a parent, guardian, or attorney as well, at least if the child is under a certain age. *See, e.g.*, Ind. Code § 31-

32-5-1; Kan. Stat. Ann. § 38-2333(a); Mont. Code Ann. § 41-5-331(2); Tex. Fam. Code Ann. § 51.09. Indeed, out of all the statutes cited by Petitioner and his *amici*, only three involve limits on juvenile interrogations that apply even to non-custodial settings. *See* Conn. Gen. Stat. § 46b-137; N.M. Stat. Ann. § 32A-2-14; W. Va. Code § 49-5-2(l).

Thus, although state legislatures have enacted a variety of different measures to protect juveniles, the common theme is that they apply only to custodial settings. It is custody, and not age, that is the triggering factor for applying these additional protections because it is custody, and not simply age, that creates the need for the protections. By enacting these protections, states have taken into account the vulnerabilities of juveniles discussed by Petitioner's *amici* that may render them less equipped to handle the coercive environment of custody and have given juveniles additional tools to combat the pressures of custodial interrogation. Outside of that coercive environment, however, states generally have not required law enforcement to take age into account when talking to suspects or witnesses.[5] *See, e.g.*, *A.A. v. State*, 706 N.E.2d 259,

[5] The way that officers must assess age to comply with these statutory protections during custody is qualitatively different than what would be required in a subjective analysis to determine custody. Moreover, the additional societal costs resulting from a subjective expansion of *Miranda* custody will be multiplied by the additional costs created by the accompanying expansion of the statutory requirements. Petitioner's proposed rule might discourage states from affording greater custodial rights

261 (Ind. Ct. App. 1999) ("[W]hen a juvenile who is not in custody gives a statement to police, neither the safeguards of *Miranda* warnings nor the juvenile waiver statute [requiring a co-waiver by a parent or attorney] is implicated.").

* * *

Expanding the scope of *Miranda* custody, and therefore *Miranda* warnings, carries with it costs to society in lost confessions and hindered investigations—costs that are worth bearing in situations that are truly custodial and coercive, but are not justifiable when expanded to situations that are not objectively so. *See Moran v. Burbine*, 475 U.S. 412, 426-27 (1986) (noting society's "legitimate and substantial interest in securing admissions of guilt" and stating that admissions of guilt are more than "merely desirable" because they are "essential to society's compelling interest" in investigating and punishing those who violate the law). Custodial status is properly predicated on objective, easily discernable factors. The subjective factors of age and maturity (and the like) already may be considered in the voluntariness inquiry, which is sufficient to address the concerns raised with regard to juvenile status. Thus, blurring the custody inquiry by adding subjective considerations depreciates the clarity of *Miranda* and imposes additional costs to society without creating any significant benefits.

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to juveniles, lest ordinary police work become too cumbersome.

Conclusion

The judgment of the Supreme Court of North Carolina should be affirmed.

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