No. 09-11121

In the Supreme Court of the United States

J.D.B., PETITIONER

v.

STATE OF NORTH CAROLINA

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether a juvenile's age is a factor in determining whether he is "in custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

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INTEREST OF THE UNITED STATES

This case presents the question whether the age of a juvenile is a factor in determining whether he is "in custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Although the States adjudicate most violations of law committed by juveniles, the Department of Justice also initiates proceedings against juveniles under the Federal Juvenile Delinquency Act, 18 U.S.C. 5031 *et seq*. The Act authorizes the Attorney General in certain circumstances to bring delinquency proceedings against juveniles and to proceed against some juveniles as adults. 18 U.S.C. 5032. In addition, every year, federal agents interview suspects who are known to be (or are later discovered to be) juveniles. The United States has an interest in introducing into evidence voluntary,

noncustodial statements that are reliable evidence of guilt, regardless of whether the federal agents or state officers who take the statements have correctly assessed the age of the interviewee and correctly determined the degree (if any) to which that characteristic might render the interviewee more likely than a similarly situated adult to believe himself to be in custody.

STATEMENT

Following a conditional admission of guilt in the Orange County District Court, petitioner was adjudicated a delinquent juvenile, based on breaking and entering and larceny. J.A. 78a-79a. The trial court placed petitioner on 12 months of probation, with associated conditions, and ordered him to pay approximately $500 in restitution. J.A. 79a. The North Carolina Court of Appeals (J.A. 48a-73a) and the Supreme Court of North Carolina (J.A. 6a-47a) affirmed.

1. On September 24, 2005, two homes in Chapel Hill, North Carolina, were burglarized and various items were stolen, including jewelry and a digital camera. J.A. 97a. Petitioner, a 13-year-old special-education student, was identified as a possible suspect. J.A. 97a-98a, 107a, 122a. Petitioner had been seen behind a residence in the same neighborhood on the day of the break-ins and had been interviewed at that time by a local police officer. *Ibid.* The police later learned that the stolen camera had been recovered at petitioner's middle school and that petitioner had been seen in possession of it. J.A. 98a-99a, 107a-108a.

Investigator DiCostanzo, a juvenile investigator from the local police force, went to petitioner's school to interview him. J.A. 98a. Investigator DiCostanzo was aware,

when he did so, of petitioner's age. J.A. 124a. Petitioner was escorted from his classroom to a school conference room by a "school resource officer," a uniformed police officer assigned to the school. J.A. 98a, 109a, 144a; Br. in Opp. 3 & n.1.

After petitioner arrived, the door to the conference room was closed, but not locked. J.A. 98a. Joining Investigator DiCostanzo in the conference room were the school resource officer, an assistant principal, and a school intern. J.A. 98a; 108a. Investigator DiCostanzo identified himself to petitioner and began the interview with small talk about sports and petitioner's family life. J.A. 110a, 114a, 127a. He asked if petitioner would agree to answer questions about recent break-ins. J.A. 98a, 127a. Petitioner consented. J.A. 98a.

Petitioner initially denied any criminal activity, claiming that he had been in the neighborhood looking for work mowing lawns. J.A. 99a. The assistant principal encouraged petitioner to "do the right thing because the truth always comes out in the end," and Investigator DiCostanzo confronted petitioner with the recovery of the stolen camera. J.A. 99a, 111a-112a.

Petitioner responded by asking whether he would still be in trouble if he returned the "stuff." J.A. 99a, 112a. Investigator DiCostanzo told petitioner that returning the items would be helpful, but that "this thing is going to court." *Ibid.* Investigator DiCostanzo also told petitioner that, if he felt that petitioner was going to commit more break-ins, he "would have to look at getting a secure custody order." *Ibid.* Investigator DiCostanzo explained that a secure custody order would require petitioner to be placed in juvenile detention before appearing in court. J.A. 112a.

Investigator DiCostanzo advised petitioner that "you don't have to speak to me; you don't have to talk to me; if you want to get up and leave, you can do so" but that he "hoped that [petitioner] would listen to what [he] had to say." J.A. 99a, 112a. Investigator DiCostanzo then asked whether petitioner understood that he was not under arrest and was under no obligation to talk. *Ibid.* Petitioner "indicated by nodding 'yes' that he understood that he did not have to talk * * * and that he was free to leave." J.A. 99a; see J.A. 120a-121a.

Petitioner provided details concerning his involvement in the break-ins. J.A. 99a, 112a-113a. Petitioner also wrote out a short statement admitting his participation and stating that he would get the other juvenile who was involved "to give the jewelry back." J.A. 100a, 113a. When the bell rang signaling the end of the school day, petitioner left and went home on his regular school bus. J.A. 100a. The full interview lasted from 30 to 45 minutes. *Ibid.*

The investigation continued that afternoon. The police obtained a search warrant for petitioner's residence. J.A. 100a, 117a. After petitioner arrived home from school, he retrieved jewelry for the police from inside the house, and he led Investigator DiCostanzo to additional stolen jewelry that he had hidden on the roof of a nearby gas station. J.A. 100a, 118a-119a. Petitioner also volunteered to help retrieve stolen items from his accomplice, but no one came to the door when he and Investigator DiConstanzo went to the accomplice's residence. J.A. 119a-120a.

2. a. Two juvenile petitions were filed against petitioner, each alleging one count of breaking and entering and one count of larceny. J.A. 6a. Petitioner moved to

suppress all of the statements he had made, along with the stolen items the police had recovered as a result of his statements. J.A. 88a-89a, 104a. Petitioner argued that he had been "in custody" when he made the statements and that the police had failed to follow the proper procedures for a custodial interrogation: he had not received pre-interview warnings, as required by *Miranda* v. *Arizona*, 384 U.S. 436, 444-445 (1966), and no parent or guardian had been present, as required by N.C. Gen. Stat. § 7B-2101. J.A. 88a-89a, 104a; see N.C. Gen. Stat. § 7B-2101 (2005) (special procedures for custodial questioning of juveniles, including requirement that "admission or confession" of in-custody juvenile under 14 years of age be excluded from evidence unless "parent, guardian, custodian, or attorney" was present). Petitioner argued in the alternative that, even if he had not been in custody, he had been coerced into making the statements involuntarily. J.A. 104a.

After a hearing at which both petitioner and Investigator DiCostanzo testified, the trial court orally denied petitioner's suppression motion. J.A. 155a. The trial court concluded that petitioner had not been in custody when he talked to the police and that petitioner "clearly" had the "mental capacity * * * to understand" concepts relevant to the questioning. *Ibid.*

Petitioner, while continuing to object to the trial court's suppression ruling, admitted the allegations against him in the juvenile petitions. J.A. 6a-7a. The trial court entered an order adjudicating petitioner a delinquent. J.A. 7a.

b. Petitioner appealed, and the state court of appeals remanded for formalized findings of fact. J.A. 85a. The trial court subsequently issued a written suppres-

sion order, with findings of fact and conclusions of law, retroactively dated back to the suppression hearing. J.A. 97a-102a. The trial court concluded, with respect to the interview at his school, that petitioner "was not in custody when he was brought to the conference room"; that petitioner "was informed that he was free to leave and that he did not have to answer any questions, but chose to stay and volunteer more information"; and that "[b]ased on the totality of the circumstances, all statements made by [petitioner] and actions taken by [petitioner] in the presence of the law enforcement officers were voluntary." J.A. 101a-102a.

c. Petitioner renewed his appeal, contesting the trial court's determination that he had not been in custody during the questioning. J.A. 48a-73a. The court of appeals affirmed, concluding that a reasonable person in petitioner's position "would not have believed himself to be in custody or deprived of his freedom of action in some significant way" during petitioner's interactions with the police. J.A. 59a. The court rejected, as a factual matter, the contention "that Investigator DiCostanzo threatened [petitioner] with a secure custody order" during the interview at petitioner's school, noting that "the trial court did not make any finding of fact that [petitioner] was threatened." J.A. 57a. The court also rejected, as a legal matter, the contention that petitioner's "mental capacity and age" were "determinative" of the custody inquiry, noting that the custody inquiry is an "objective test" that examines "whether a reasonable person in the individual's position would have believed himself to be in custody or deprived of his freedom of action in some significant way." J.A. 58a.

One judge concurred in a separate opinion "to reiterate that the test for determining whether a juvenile is in custody thereby warranting a *Miranda* warning is an objective test to be applied on a case-by-case basis based on the totality of the circumstances." J.A. 61a. Another judge dissented, stating, among other things, that "the fact that [petitioner] was a middle school aged child is certainly among the circumstances relevant to 'whether a reasonable person in [his] position, under the totality of the circumstances, would have believed that he was under arrest or was restrained in his movement to the degree associated with a formal arrest.'" J.A. 65a (citation omitted).

d. The state supreme court affirmed, finding an absence of "sufficient 'indicia of formal arrest' to justify a conclusion that" petitioner was in custody. J.A. 16a (citation omitted); see J.A. 6a-47a. As to the in-school interview, the court reasoned that petitioner had failed to show sufficient additional restraints, beyond the "typical restrictions of the school setting," to establish custody. J.A. 14a-15a. Among other things, there was "no indication in the trial court's findings that [petitioner] was restrained in any way or that anyone stood guard at the conference room door," and Investigator DiCostanzo had indicated that petitioner was not required to answer questions and "began his questions only after [petitioner] said he was willing to answer." J.A. 15a.

The court rejected petitioner's argument that "the inquiry into whether he was in custody should take into consideration [his] age and his status as a special education student." J.A. 17a. The court reasoned that "subjective mental characteristics are not relevant regarding whether 'a *reasonable* person' would believe he had been

placed under the equivalent of a formal arrest." J.A. 18a (citations omitted).

There were two dissenting opinions. One justice would have held, as a matter of state law, that Section 7B-2101 requires consideration of age in assessing whether a juvenile was in custody and that petitioner had satisfied that state-law custody test. J.A. 19a-34a. Two other justices believed it appropriate to consider petitioner's age and status as a middle-school student as part of the *Miranda* custody analysis as well and would have held that Investigator DiCostanzo's questioning of petitioner violated both *Miranda* and Section 7B-2101. J.A. 34a-47a.

SUMMARY OF ARGUMENT

In determining whether a suspect is "in custody" under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), courts should examine objective restraints surrounding a suspect's questioning from the vantage point of a reasonable person, rather than seek to tailor the inquiry to the age and the assumed resulting psychological vulnerabilities of the person questioned. The Court has rejected similar factors that would blur the custody inquiry, and the same conclusion is warranted here.

Under the Due Process Clause, courts have examined the totality of the circumstances, including both the objective circumstances of the questioning and the psychological make-up of the suspect, to determine the voluntariness of a suspect's statements. Experience revealed that application of that fact-sensitive due process test risked the admission of an involuntary custodial confession. In order to counteract that risk, *Miranda* adopted an additional procedural rule when a suspect is

questioned "in custody." In that setting, the Court established a set of procedures (warning the suspect of his rights and obtaining a waiver) that police must generally follow in order to secure the admission of statements in the government's case in chief. One of the principal advantages of *Miranda* is to provide police and courts with clear guidance about how questioning must be conducted in order for statements obtained to be admissible.

The Court has emphasized that an objective test for "custody"—the trigger for the *Miranda* procedures—plays a critical role in maintaining the clarity of the *Miranda* rule. See, *e.g.*, *Yarborough* v. *Alvarado*, 541 U.S. 652, 667 (2004). The Court has defined "custody" as "a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest" and instructed police and courts that they can identify such a situation by (1) examining "the circumstances surrounding the interrogation" and (2) assessing whether a "reasonable person" in those circumstances would have felt able "to terminate the interrogation and leave." *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995) (internal quotation marks and citation omitted). In applying the custody test, this Court has focused exclusively on such observable factors as the length and location of police questioning and has excluded such psychological factors as a suspect's intoxication, emotional distress, or prior experience with police.

Consideration of a suspect's age—as an indicium of the suspect's psychological vulnerability—would, for the first time in the 45 years of post-*Miranda* jurisprudence, blur the custody line by mandating consideration of a psychological factor. "Age"—meant as shorthand for a correlation between youth and "susceptib[ility] to

the coercive techniques of police interrogation" (Pet. Br. 9)—is materially different from the sorts of "objective" circumstances that the Court has taken into consideration in past custody determinations. Age, in the chronological sense, is an objective circumstance. But its significance in gauging how a suspect would perceive or react to a given set of restraints is not. Rather, the vulnerability that may accompany youth is an individual psychological characteristic of the sort that this Court has, for sound reason, kept out of the custody analysis.

The Court has stated that "the simplicity and clarity of the holding of *Miranda*" are not to be compromised "[a]bsent a compelling justification." *Berkemer* v. *McCarty*, 468 U.S. 420, 432 (1984). The inclusion of age as a factor would significantly complicate *Miranda* custody determinations by requiring officers to ascertain the age of suspects (which is not readily discerned, and which suspects may not disclose) and then make difficult judgments about how that factor might affect the suspect's perception of events. Courts reviewing officers' actions would likewise lack determinable standards for factoring age into the custody test. Consideration of age would therefore likely generate inconsistent results and deprive officers in the field of useful direction. And incorporation of age into the custody inquiry would logically open the door to requiring consideration of a variety of other psychological characteristics, such as mental disabilities or cultural predispositions, effectively collapsing the *Miranda* custody inquiry back into the due process voluntariness inquiry.

There is no need to embark upon such a course. Additional protections against coerced confessions, such as the due process voluntariness test and various statutes,

already take age (and other psychological factors) adequately into account. Moreover, the existing custody test already provides ample incentives for police to provide *Miranda* warnings whenever officers believe it reasonably likely that a suspect is in custody. The lower court therefore correctly concluded that petitioner's age was not a relevant factor in determining whether he was in custody.

ARGUMENT

AGE IS NOT A RELEVANT CONSIDERATION IN DETERMINING WHETHER A JUVENILE IS "IN CUSTODY" UNDER *MIRANDA*

Under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), statements taken in custodial interrogation must be preceded by specified warnings in order to be admissible in the government's case in chief. Specifically, the suspect must "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444; see also *Florida* v. *Powell*, 130 S. Ct. 1195 (2010). If a suspect makes a statement during custodial interrogation, the burden is on the government to show, as a "prerequisite[] to the admissibility of [the] statement," that the defendant "voluntarily, knowingly and intelligently" waived his rights. *Miranda*, 384 U.S. at 444, 475-476.

Those procedures are a prerequisite to admissibility, "however, 'only where there has been such a restriction on a person's freedom as to render him "in custody."'" *Stansbury* v. *California*, 511 U.S. 318, 322 (1994) (per curiam) (quoting *Oregon* v. *Mathiason*, 429 U.S. 492, 495

(1977) (per curiam)). As petitioner acknowledges (Pet. Br. 8-9), that custody determination involves "an objective test." *Yarborough* v. *Alvarado*, 541 U.S. 652, 667 (2004).

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. 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 on freedom of movement of the degree associated with a formal arrest.

Id. at 663 (quoting *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995)).

The objective inquiry for custody does not include consideration of the psychological effect that a particular suspect's age might have on how the suspect would evaluate the circumstances in which he finds himself. Inclusion of age would transform the custody inquiry, render it complex to administer, and serve no necessary purpose.

A. The *Miranda* Custody Test Is An Objective Test Designed To Give Clear Guidelines To Police And Courts

As the Court "ha[s] stressed on numerous occasions, '[o]ne of the principal advantages' of *Miranda* is the ease and clarity of its application." *Moran* v. *Burbine*, 475 U.S. 412, 425 (1986) (quoting *Berkemer* v. *McCarty*, 468 U.S. 420, 430 (1984)). *Miranda*, the Court has said, has the "important virtue of informing police and prose-

cutors with specificity as to how a pretrial questioning of a suspect must be conducted" in order to result in admissible statements. *Colorado* v. *Spring*, 479 U.S. 564, 577 n.9 (1987) (internal quotation marks and citation omitted); see, *e.g.*, *Missouri* v. *Seibert*, 542 U.S. 600, 622 (2004) (Kennedy, J., concurring in the judgment) ("*Miranda*'s clarity is one of its strengths."). The objective nature of the custody test is a critical component of *Miranda*'s clarity.

1. Before *Miranda*, this Court exclusively "evaluated the admissibility of a suspect's confession under a voluntariness test," whose "primar[y]" constitutional basis was the Due Process Clause. *Dickerson* v. *United States*, 530 U.S. 428, 433 (2000)). Under that test, in order to determine whether a particular "defendant's will was overborne" during interrogation, *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 226 (1973), a court must engage in "a weighing of the circumstances of pressure against the power of resistance of the person confessing," *Stein* v. *New York*, 346 U.S. 156, 185 (1953).

Accordingly, the due process test considers "both the characteristics of the accused and the details of the interrogation." *Schneckloth*, 412 U.S. at 226. Relevant factors to be considered in the voluntariness inquiry include "the crucial element of police coercion, the length of the interrogation, its location, [and] its continuity," as well as "the defendant's maturity, education, physical condition, and mental health." *Withrow* v. *Williams*, 507 U.S. 680, 693 (1993) (citations omitted). As petitioner observes (Pet. Br. 29), this Court has held that a defendant's age is among the factors considered in the due process voluntariness determination. See, *e.g.*, *Gallegos* v. *Colorado*, 370 U.S. 49, 54 (1962)

(14-year-old was "not equal to the police in knowledge and understanding of the consequences of the questions and * * * is unable to know how to protect his own interests"); *Haley* v. *Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion) (when voluntariness of confession by a child is at issue, "special care in scrutinizing the record must be used").

Miranda developed in significant part as a response to perceived difficulties in applying the due process voluntariness test. The voluntariness test was considered difficult "for law enforcement officers to conform to, and for courts to apply in a consistent manner." *Dickerson*, 530 U.S. at 444. In addition, "the advent of modern custodial police interrogation brought with it an increased concern about confessions obtained by coercion," *id.* at 434-435, and "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements," *id.* at 435. Accordingly, the Court determined that "reliance on the traditional totality-of-the-circumstances test raised a risk of overlooking an involuntary custodial confession, a risk that the Court found unacceptably great when the confession is offered in the case in chief to prove guilt." *Id.* at 442 (citation omitted).

2. *Miranda* simplifies and clarifies the landscape by providing "a set of prophylactic measures" to govern the admissibility of statements made during custodial interrogations. *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1219 (2010). The "gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in *Miranda* imposes on law enforcement agencies and the courts by requiring the suppression of trustworthy and highly probative

evidence even though the confession might be voluntary under traditional Fifth Amendment analysis." *Fare* v. *Michael C.*, 442 U.S. 707, 718 (1979).

In identifying custody as the point at which additional protections become appropriate, the Court observed that it is "when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way" that "our adversary system of criminal proceedings commences," and "the safeguards to be erected about the privilege" against compelled self-incrimination "must come into play." *Miranda*, 384 U.S. at 477. The Court's decisions "make clear" that identification of this procedurally significant tipping point "depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury*, 511 U.S. at 323.

The "ultimate inquiry" is whether there was a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest," an inquiry that depends on (1) "the circumstances surrounding the interrogation" and (2) whether a "reasonable person" in those circumstances would "have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson*, 516 U.S. at 112 (internal quotation marks and citation omitted).[1] In determining whether "indicia of arrest [are] present," *California* v. *Beheler*, 463 U.S.

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[1] The Court has recognized that "the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. That is, *Miranda* applies only in the situations that generate the concerns that the decision addressed, not in every situation in which freedom of movement is significantly restrained. *Ibid.*

1121, 1123 (1983) (per curiam), the Court has looked to such factors as the location of the questioning, the use of force or restraints, the length of the interview, and the number of officers present. See, *e.g.*, *Berkemer*, 468 U.S. at 437-438 (considering public setting, length, and presence of only one or two officers in holding traffic-stop questioning noncustodial); *New York* v. *Quarles*, 467 U.S. 649, 655 (1984) (considering that suspect "was surrounded by at least four police officers and was handcuffed" in holding questioning custodial); *Mathiason*, 429 U.S. at 495 (considering absence of restraint on freedom of movement in holding police-station questioning noncustodial); *Beckwith* v. *United States*, 425 U.S. 341, 342-344 (1976) (considering location at suspect's home in holding questioning noncustodial).

The Court has stressed that the objective nature of the test "furthers 'the clarity of *Miranda*'s rule,' ensuring that the police do not need 'to make guesses as to the circumstances at issue before deciding how they may interrogate the suspect.'" *Alvarado*, 541 U.S. at 667 (brackets and citation omitted). In *Berkemer* v. *McCarty*, *supra*, this Court supported its adoption of the "reasonable person" standard for custody determinations by citing the seminal case of *People* v. *P.*, 233 N.E.2d 255, 256, 260 (N.Y. 1967), in which New York's highest court applied an objective reasonable-man standard in holding that a 16-year-old suspect was not in custody for *Miranda* purposes when he was interrogated by a police officer outside his home. This Court cited *People* v. *P.* for the proposition that "an objective, reasonable-man test is appropriate because, unlike a subjective test, it * * * 'does [not] place upon the police the burden of anticipating the frailties or idiosyncracies of every person whom they question.'" *Berk-*

emer, 468 U.S. at 442 n.35; see *Alvarado*, 541 U.S. at 662. Commentators and courts have likewise noted the value of employing an objective standard that does not consider the characteristics of individual suspects or officers, because of the clearer guidance it provides police. See, *e.g.*, Geoffrey R. Stone, *The* Miranda *Doctrine in the Burger Court*, 1977 Sup. Ct. Rev. 99, 153 (noting that objective approach "has been widely endorsed by courts and commentators alike" because it "eliminates the difficulties of determining states of mind, and does not hold the police responsible for the idiosyncracies of particular defendants"); *United States* v. *Macklin*, 900 F.2d 948, 951 (6th Cir.) (same), cert. denied, 498 U.S. 840 (1990); *United States* v. *Phillips*, 812 F.2d 1355, 1359-1360 (11th Cir. 1987) (same).

B. The Psychological Characteristics Of Individual Suspects, Including Age-Related Characteristics, Are Not Relevant To The *Miranda* Custody Determination

1. This Court has consistently rejected claims that the individual psychological characteristics of those questioned must be considered in determining whether they were "in custody" for *Miranda* purposes. For example, the defendant in *California* v. *Beheler*, *supra*, had voluntarily agreed to accompany police to the station house to answer questions about a shooting he had reported. 463 U.S. 1122. Although he was told he was free to leave, he was not given *Miranda* warnings and made a statement that was introduced against him at his trial for first-degree murder. *Ibid.* The California Court of Appeal reversed his conviction, holding that the interview with police constituted custodial questioning. *Id.* at 1122-1123. In so holding, the state court considered various personal characteristics of the defendant at

the time of the interview that, the court believed, made him more susceptible to coercion, such as the fact that he "had been drinking earlier in the day," "was emotionally distraught," and "was a parolee who knew that 'it was incumbent upon him to cooperate with police.'" *Id.* at 1124-1125; see Pet. App. 24-26, *Beheler*, *supra* (No. 82-1666).

This Court reversed, specifically rejecting the claim that the defendant was "'coerced' because he was unaware of the consequences of his participation" in the interview. *Beheler*, 463 U.S. at 1125 n.3. The Court observed that the defendant had "cite[d] no authority to support his contention that his lack of awareness transformed the situation into a custodial one." *Ibid.* As the Court later explained, *Beheler* was "indistinguishable" from *Oregon* v. *Mathiason*, *supra*, which had involved similar police conduct but had not involved such psychological factors. *Alvarado*, 541 U.S. at 662; see *Beheler*, 463 U.S. at 1124-1125; *Mathiason*, 429 U.S. at 493-494.

Similarly, in *Yarborough* v. *Alvarado*, *supra*, a 17-year-old defendant with no prior criminal record came to the police station with his parents. 541 U.S. at 656, 660. He did not receive *Miranda* warnings, and, during a two-hour interview in a small room, made incriminating statements that were later introduced against him at trial. *Id.* at 656-659. The state courts affirmed his conviction for second-degree murder, concluding that he had not been in custody when he made the statements. *Id.* at 659. A federal court of appeals, however, determined that he was entitled to a writ of habeas corpus because the state-court adjudication had "resulted in a decision that was contrary to, or 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); see 541 U.S. 659-660. In the court of appeals' view, "age and experience [with law enforcement] must be a factor in the *Miranda* custody inquiry," and the state courts' custody conclusion was unreasonable in light of those factors. *Id.* at 660.

This Court reversed. *Alvarado*, 541 U.S. at 655. It explained that "[t]here is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience," namely, that the custody test "is an objective test." *Id.* at 667. The Court observed that its "opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration" and that the "only indications in the Court's opinions relevant to a suspect's experience with law enforcement have rejected reliance on such factors." *Id.* at 666-667. The Court held that experience with law enforcement was an improper factor in the *Miranda* custody test even "as a *de novo* matter," reasoning that police often "will not know a suspect's interrogation history"; that "the relationship between a suspect's past experiences and the likelihood a reasonable person with that experience would feel free to leave often will be speculative"; and that "[w]e do not ask police officers to consider these contingent psychological factors when deciding when suspects should be advised of their *Miranda* rights." *Id.* at 668. The Court additionally held that "failure to consider [a suspect's] age does not provide a proper basis for finding that the state court's decision was an unreasonable application of clearly established law." *Ibid.* The Court explained that, in granting habeas relief, the court of appeals had "ignored the argument that the custody inquiry states an objective rule designed to give clear guidance to the police, while con-

sideration of a suspect's individual characteristics—including [a suspect's] age—could be viewed as creating a subjective inquiry." *Ibid.*

The consistent objective focus of the *Miranda* custody inquiry is especially striking when compared alongside the variety of psychological factors held relevant to the due process voluntariness inquiry. This Court has recognized that many personal characteristics of the suspect—*e.g.*, lack of education, low intelligence, and poor physical condition—are relevant to voluntariness determinations because they bear on the suspect's ability to resist coercion or to appreciate the implications of his actions. See, *e.g.*, *Clewis* v. *Texas*, 386 U.S. 707, 712 (1967) (concern about adult suspect's faculties given "additional weight" because he "had only a fifth-grade education"); *Payne* v. *Arkansas*, 356 U.S. 560, 562 n.4, 567 (1958) (emphasizing that suspect was "mentally dull"); *Fikes* v. *Alabama*, 352 U.S. 191, 196, 198 (1957) (holding that pressure applied against suspect who was "weak of * * * mind" and of "low mentality" rendered statement involuntary); *Greenwald* v. *Wisconsin*, 390 U.S. 519, 520-521 (1968) (per curiam) (emphasizing that suspect did not have his blood-pressure medication); *Clewis*, 386 U.S. at 712 (noting that suspect's faculties were impaired by "sickness"). But in the 45 years since *Miranda*, this Court *never* has held any of those personal characteristics to be relevant in determining whether a person was subject to "the functional equivalent of formal arrest." *Berkemer*, 468 U.S. at 442.

2. This Court's precedents therefore provide no support for petitioner's suggestion (Pet. Br. 9) that "age" is the sort of "objective circumstance" that traditionally plays a role in the *Miranda* custody analysis. Although "age" is "objective" in the narrow sense that someone's

birthdate precisely determines how old he is, that is not the sense in which petitioner is employing the term here. Petitioner is instead using the term "age" as a stand-in for a set of age-correlated factors that may "render[] a child particularly susceptible to the coercive techniques of police interrogation." *Ibid.* As petitioner's own references (*e.g.*, Pet. Br. 19, 23) to "psychology," "brain science," "cognitive" studies, and the like confirm, "age" in that sense is a psychological factor akin to the ones that the Court has excluded from the custody test (drunkenness, emotional distress, experience with police) and unlike the sort of objective factors (*e.g.*, location, physical restraint, length of time) the Court has heretofore included.

Petitioner appears to suggest (Pet. Br. 20-21) that because courts in some contexts employ a "reasonable juvenile" test, age must therefore be considered an objective factor. But the Court rejected a similar suggestion in *Alvarado*. The court of appeals there "styled its inquiry as an objective test by considering what a 'reasonable 17-year-old, with no prior history of arrest or police interviews,' would perceive." 541 U.S. at 667. This Court nevertheless concluded that consideration of criminal history "turns too much on the suspect's subjective state of mind" to be included in the custody analysis and acknowledged that age "could be viewed as creating a subjective inquiry." *Id.* at 668-669. Framing consideration of age in putatively objective terms—*e.g.*, what a "reasonable 17-year-old" or a "reasonable 16-year old" would do—does not alter the inherently psychological nature of the inquiry.[2]

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[2] Petitioner's proposed "reasonable juvenile" test is also unlike "reasonable juvenile" tests in contexts such as tort law (Pet. Br. 21; cf.

One of petitioner's amici analogizes consideration of a suspect's age to consideration of a suspect's blindness or deafness. See Juvenile Law Ctr. Amicus Br. 23. This Court has never directly addressed whether or how such sensory disabilities would affect the *Miranda* custody test, but they present a different issue from psychological factors such as age. Sensory disabilities affect a suspect's acquisition of knowledge about the "circumstances surrounding [his] interrogation." *Thompson*, 516 U.S. at 112. They could potentially be addressed in an objective fashion by asking how a reasonable person, in a situation defined by the circumstances of which the disabled suspect reasonably had notice (*e.g.*, excluding sights or sounds), would feel. Psychological factors such as age, however, affect the suspect's mental analysis of the situation. There would be no way to account for them other than to transform the "reasonable person" test, *ibid.*, into something else, in an attempt to approximate the suspect's thought processes. This Court has consistently declined to transform the *Miranda* custody test in that way.

C. Expansion Of The *Miranda* Custody Test To Require Consideration Of Psychological Factors Correlated To Age Is Unwarranted

Because of the considerable advantages afforded by the clear guidance *Miranda* provides, this Court has

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Alvarado, 541 U.S. at 674 (Breyer, J., dissenting)) because it does not regulate the conduct of the juvenile himself, but instead regulates the conduct of officers who interact with the juvenile. A rule that requires officers to speculate about the impact of a juvenile's age on how the juvenile would perceive an otherwise noncustodial setting creates practical difficulties that are not present in rules whose purpose is to require juveniles themselves to act reasonably. See Section C.1, *infra*.

indicated it will not compromise "the simplicity and clarity of the holding of *Miranda*" "[a]bsent a compelling justification." *Berkemer*, 468 U.S. at 432. No compelling justification exists here, as the disadvantages of petitioner's rule greatly outweigh any advantages.

1. Consideration of age would undermine* Miranda*'s purpose of providing clear guidelines for police and courts

Petitioner's proposal would add significantly to the complexity of the *Miranda* custody determination. While it is not entirely clear from petitioner's brief, his "reasonable juvenile" test (Pet. Br. 20) presumably would require consideration of how a hypothetical "reasonable juvenile" of the suspect's particular age would perceive the circumstances. See ABA Amicus Br. 17-18; Ctr. on Wrongful Convictions of Youth Amicus Br. 28-29; Juvenile Law Ctr. Amicus Br. 30-31.[3] That test would introduce a number of practical difficulties that neither petitioner nor any of his amici identify an effective way to solve.

a. To begin with, police frequently will be unable to determine a subject's age if the subject is not carrying identification or lies about his age (for example, to avoid arrest for a curfew violation, unlawful possession of alcohol or cigarettes, or any other activity unlawful because of the suspect's age). Cf. *Alvarado*, 541 U.S. at 668 (excluding interrogation history from custody inquiry in

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[3] If petitioner is, in fact, departing from his amici on this issue, he fails to identify how "reasonable juvenile" would be defined, or why it would make sense (if age is to be considered in the first place) to treat older juveniles the same as younger ones. See, *e.g.*, Pet. Br. 20 (discussing studies distinguishing between juveniles under 16 and other juveniles).

part because "[i]n most cases, police officers will not know" it); *Berkemer*, 468 U.S. at 430 (excluding seriousness of crime from *Miranda* inquiry in part because "police often are unaware when they arrest a person whether he may have committed a misdemeanor or a felony"). Studies demonstrate that people often make good-faith mistakes about whether someone is a juvenile. See, *e.g.*, Paul Willner & Gavin Rowe, *Alcohol Servers' Estimates of Young People's Ages*, 8 Drugs: Education, Prevention & Policy 376, 379-381 (2001) (test subjects looking at photos misidentified 56% of 16-year-old girls, approximately 40% of 16-year-old boys, and 18% of 13-year-old girls as non-juveniles) (Willner & Rowe); Ray M. Merrill et al., *The Relationship of Perceived Age and Sales of Tobacco and Alcohol to Underage Customers*, 25 J. of Cmty. Health 401, 405-406 (2000) (Merrill) (test subjects wrong over 20% of the time in certain cases); see also *Alvarado*, 541 U.S. at 669 (O'Connor, J., concurring) ("It is difficult to expect police to recognize that a [nearly 18-year-old] suspect is a juvenile."). Assuming the officer recognizes the subject as a juvenile, pinpointing his precise age is an even more challenging task. Willner & Rowe 377 (test subjects significantly mis-estimated juveniles' ages); Merrill 405 tbl.1 (same).[4]

[4] Although it may be relatively easy for an officer to determine the juvenile status (if not the exact age) of a very young juvenile, preadolescent crime is a rare occurrence that should not be the focus of the Court's consideration in this case. In 2008, over 99% of reported state and local juvenile arrests nationwide were of suspects ten or older, and nearly 94% were of suspects 13 or older. Federal Bureau of Investigation, U.S. Dep't of Justice, *Crime in the United States, 2008* (Sept. 2009), http://www2.fbi.gov/ucr/cius2008/data/table_38.html. There were no federal arrests of suspects under the age of 13 in fiscal year 2008. See Bureau of Justice Statistics, Federal Justice Statistics Resource Center, http://fjsrc.urban.org.

Petitioner points out (Pet. 26) that a suspect interviewed at his middle school will obviously be a juvenile. But middle schools are not the only place where interviews can occur. Investigations of crime by street gangs, for example, may frequently involve contact outside of school with potential juveniles whose age and juvenile status are not readily determinable. See, *e.g.*, Nat'l Gang Ctr., *National Youth Gang Survey Analysis: Demographics* (in 2006, approximately one-third of all gang members, and over 50% of gang members in certain areas, were juveniles), http://www.nationalgangcenter.gov/Survey-Analysis/Demographics#anchorage. Moreover, the middle-school argument does not translate to high schools, where many students are non-juveniles. See U.S. Census Bureau, *School Enrollment—Social and Economic Characteristics of Students: October 2008* tbl.1, http://www.census.gov/population/socdemo/school/cps2008/tab01-01.xls (nearly 1.5 million students ages 18 or 19 were enrolled in high school in 2008).

Even if officers are able accurately to determine a subject's age, it "may be difficult for them to ascertain what bearing it has on the likelihood that the suspect would feel free to leave." *Alvarado*, 541 U.S. at 669 (O'Connor, J., concurring). While officers can rely on their own experience, and a considerable body of precedent, to evaluate how various objective factors (such as the length of an interview) affect the custody analysis, consideration of age would introduce a new dimension that would require reassessment of even previously well-settled scenarios to factor in the indeterminate perspectives of juveniles of different ages. Neither petitioner nor his amici offer a methodology by which a police officer can reliably assess how a "reasonable juve-

nile" of a particular age would view a specific set of circumstances, or how that view would differ from the view of a "reasonable juvenile" of a different age or the view of a "reasonable person." Studies indicating, for example, "that juveniles under the age of sixteen are significantly more likely to comply with adult authority" as a general matter (Pet. Br. 20) offer no concrete guidance to officers, untrained in juvenile psychology, who risk the loss of critical confession evidence unless they can make accurate, on-the-spot, case-specific custody determinations. Cf. *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 348 (2001) (rejecting rule that would require officers to know details of the penalty schemes for various offenses) (citing *Berkemer*, 468 U.S. at 431 n.13). As this Court has recognized, "[i]t would be unreasonable to expect the police to make guesses * * * before deciding how they may interrogate the suspect." *Berkemer*, 468 U.S. at 431.

b. Courts evaluating officers' conduct in hindsight will not have it any easier. Because an officer's own mindset is irrelevant to the custody test, *Stansbury*, 511 U.S. at 323, consideration of age in the custody test could not be limited to cases in which the officer was aware of the suspect's age. Nor, for that same reason, could the test take into account the officer's subjective knowledge or belief regarding the suspect's age. That leaves courts with two options. First, courts could consider a suspect's actual age in all cases, a practice that both would penalize officers for not knowing (or being able to discern) a suspect's youth and would confer a windfall on older-looking juveniles. Second, courts could attempt to determine in every case what the officer reasonably *should* have known about the suspect's age, thereby requiring courts to detour into fact-finding

about a reasonable officer's perceptions. Neither option is satisfactory. Cf. *Berkemer*, 468 U.S. at 432 (rejecting modification to custody test that would result in litigation that "would be time-consuming and disruptive of law enforcement").

Assuming courts were able to get past that threshold problem, they (like officers) would still face the further problem of the absence of concrete guidelines for assessing the degree to which a suspect's age might affect his belief that a specific set of circumstances constitutes custody. Unless suppression hearings are to become battles of the experts (which would by no means assure correct or consistent outcomes), age will simply be a thumb on the scales favoring the defendant. Cf. Jonathan S. Carter, *You're Only as "Free to Leave" as You Feel*, 88 N.C. L. Rev. 1389, 1408-1409 (2010). That result undermines the purposes of an area of law that must have "a view to * * * advancing uniform outcomes" in order to reliably guide officers' primary conduct. *Thompson*, 516 U.S. at 113 n.13; see *id.* at 114-115. Moreover, even if courts could achieve some uniformity in how they apply the custody test to defendants of different ages in different situations, "[n]either the police nor criminal defendants would benefit from" such an "elaborate set of rules, interlaced with exceptions and subtle distinctions." *Berkemer*, 468 U.S. at 432.

That some courts have adopted petitioner's rule (Pet. Br. 24-25) does not suggest that it is administrable. This Court has previously refused to modify the *Miranda* rule when doing so would "undermine" its clarity and introduce "doctrinal complexities," even when a number of lower courts had already adopted the modification at issue. *Berkemer*, 468 U.S. at 430-431; see *id.* at 427 n.7. Neither petitioner nor his amici identify how the lower

courts adopting his position have solved, or would solve, the problems discussed above, or, more fundamentally, how age could be introduced into the *Miranda* custody test without doing significant harm to its basic design.

2. No compelling reason justifies injecting age into the custody test

Petitioner and his amici suggest that, because studies show that youth generally correlates with increased susceptibility to interrogation, the existing legal protections against coerced confessions are inadequate unless age is factored into the *Miranda* custody test. *E.g.*, Pet. Br. 9. Without questioning the studies—which may illuminate other legal determinations—the argument is flawed in this context and fails to provide a "compelling justification" for expanding *Miranda* and inviting the doctrinal and practical difficulties just discussed. *Berkemer*, 468 U.S. at 432; see *Beheler*, 463 U.S. at 1124-1125 (declining to consider in the custody test personal characteristics that, in the lower court's view, rendered the suspect more susceptible to coercion).

Significantly, the argument does not admit of ready limitations. A wide variety of people—both adults and juveniles—have psychological traits that arguably make it more likely that they would consider any interaction with police to entail serious restriction on their freedom of movement. Individuals with low intelligence, people with mental infirmities, and people whose cultural background encourages compliance with police requests or causes them to view police with suspicion, for example, all might read into their interactions with police coercion that is not apparent from the objective circumstances. See, *e.g.*, *United States* v. *Salyers*, 160 F.3d 1152, 1159 (7th Cir. 1998) (rejecting claim that defendant's military

experience, which "trained [him] to obey orders from those in authority," should be considered in determining whether he was in custody for *Miranda* purposes); *Macklin*, 900 F.2d at 950-951 (rejecting claim that mental retardation rendered defendant "in custody" when she was interviewed by police in front of her house); *United States* v. *Chalan*, 812 F.2d 1302, 1307 (10th Cir. 1987) (rejecting claim of Native American that he was "in custody" for *Miranda* purposes because, by tribal custom, he could not refuse the request of tribal governor to answer FBI agents' questions about a crime), cert. denied, 488 U.S. 983 (1988). If psychological characteristics such as these are taken into account in making custody determinations, the threshold determination of *Miranda's* applicability would soon become indistinguishable from the exhaustive due process voluntariness test from which *Miranda* evolved.[5]

Furthermore, petitioner and his amici largely overlook that the constitutional framework governing coerced confessions *already* takes age, and other psychological factors, into account. The Court has "never abandoned [its] due process jurisprudence, and thus contin-

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[5] Petitioner's attempt (*e.g.*, Pet. Br. 19, 26) to draw support for his argument from Eighth Amendment cases categorically prohibiting the imposition of certain punishments (the death penalty and life imprisonment without parole for nonhomicide crimes) against juveniles, see *Graham* v. *Florida*, 130 S. Ct. 2011 (2010); *Roper* v. *Simmons*, 543 U.S. 551 (2005), is misplaced. Even if analogies could be drawn between the Eighth Amendment and *Miranda*, the Court in *Graham* and *Roper* did the opposite of what petitioner requests here. Whereas those decisions engrafted easily administrable rules onto a context (sentencing) in which detailed individualized consideration would otherwise be the norm, *Graham*, 130 S. Ct. at 2030; *Roper*, 530 U.S. at 574, petitioner's approach would complicate an easily administrable rule (the custody test) by mandating consideration of individualized factors.

ue[s] to exclude confessions that were obtained involuntarily." *Dickerson*, 530 U.S. at 434. A juvenile defendant, like any other defendant, is free to argue that his statements were involuntary, irrespective of whether he was in custody when they were made. *Id.* at 444.[6] In evaluating an involuntariness claim, courts must take both objective and psychological factors, including age, into account. See pp. 13-14, *supra*. Courts also take age and other psychological factors into account in determining whether a juvenile who did receive *Miranda* warnings knowingly and voluntarily waived his rights. See *Fare*, 442 U.S. at 725; cf. *In re Gault*, 387 U.S. 1, 55 (1967). These voluntariness and waiver doctrines provide a more natural home than the custody test's free-to-leave inquiry for arguments that juveniles are particularly likely to confess under pressure (*e.g.*, Pet. Br. 20) or may not understand their rights or the consequences of waiving them (*e.g.*, ABA Amicus Br. 14). Congress and various state legislatures have, moreover, supplemented these constitutional rules with various carefully calibrated statutory protections for juveniles. See, *e.g.*, ABA Br. App. A1-A4; see also, *e.g.*, 18 U.S.C. 5033 (parental-notification and other rights for juveniles "taken into custody").

Petitioner and his amici contend that because other constitutional doctrines and statutes already take age into account, inserting age into the custody test would impose "no additional burden" on officers or courts. Pet. Br. 22; see, *e.g.*, Juvenile Law Ctr. Amicus Br. 28-30. That is not so. First, as discussed, the custody test per-

[6] The trial court here determined that petitioner's statements were voluntary. J.A. 102a. On appeal, petitioner challenged only the trial court's determination that petitioner was not in custody when he made the statements. J.A. 53a; see Pet. C.A. Br. 1.

forms a unique clarifying function by defining the line between questioning that requires special procedures and questioning that does not. See pp. 14-17, *supra*. It is telling that Congress and most state legislatures, when they wish to provide special protections for juvenile suspects, often do so by *adopting* the custody test as the point at which additional procedures are necessary, and never by expressly *modifying* that test to require consideration of age. See Pet. Br. 15-17; ABA Br. App. A1-A4; see also, *e.g.*, 18 U.S.C. 5033. Second, whereas a statute conferring additional protections on persons of certain ages (*e.g.*, 18 U.S.C. 5033) provides a bright-line rule for police to follow (once age is determined), consideration of age in the custody analysis requires on-the-spot psychological conjecture. See Section C.1, *supra*.

Petitioner and his amici relatedly err in discounting the incentives officers already have under existing law to provide *Miranda* warnings to juveniles. The prospect that an unwarned statement will be inadmissible in the prosecution's case in chief provides significant encouragement to give *Miranda* warnings whenever officers believe there is a reasonable likelihood the suspect is "in custody." Cf. *Harris* v. *New York*, 401 U.S. 222, 225 (1971) ("[S]ufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief."). Police officers who engage in questioning before giving *Miranda* warnings also run the risk of a judicial finding that the statement was coerced. *Davis* v. *North Carolina*, 384 U.S. 737, 740-741 (1966). In that event, any statement would be unusable, and the admissibility of any subsequent statement would be imperiled. See *Seibert*, 542 U.S. at 600; *Oregon* v. *Elstad*, 470 U.S. 298, 310 (1985). The incentive to give *Miranda* warnings is especially great when the officer interviews someone

known to be a juvenile, because it is well established that age weighs heavily in voluntariness determinations. See generally *Gallegos*, 370 U.S. at 54. In contrast, officers who give *Miranda* warnings and obtain explicit and valid waivers before speaking with the accused are far more likely to persuade courts that all the statements they have obtained are voluntary. As this Court has explained, "cases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare." *Dickerson*, 530 U.S. at 444 (brackets omitted) (quoting *Berkemer*, 468 U.S. at 433 n.20).

Finally, petitioner's suggestion that there is a particular need to consider age in the custody test when an interview occurs at school, Pet. Br. 26-28, is misplaced. Location—including the school setting of an interview—is, of course, one of the objective factors that bears on the custody test (as well as the due process voluntariness test). See pp. 13, 15-16, *supra*. But to the extent that petitioner argues that the school setting should have particular weight in the *Miranda* custody analysis, those arguments are neither within the scope of, nor logically antecedent to, the solely age-related question on which this Court granted certiorari. See Pet. i. And to the extent that petitioner instead argues that consideration of age is necessary to properly calibrate the pressures that a student might feel when interviewed at school, that argument is mistaken. A court or officer need not try to replicate the mindset of a juvenile in order to understand and account for the school environment. Substantial numbers of non-juveniles, as well as juveniles, attend school. See p. 25, *supra*.

Furthermore, restrictions in the school setting can be relevant in establishing baseline restraints and expectations. The Court has, for example, held that the far more restrictive environment of incarceration to serve a sentence in a prison does not automatically constitute "custody" for *Miranda* purposes, although additional restraints in a prison interview may amount to "custody." *Shatzer*, 130 S. Ct. at 1224; see, *e.g.*, *United States* v. *Ellison*, No. 09-1234, 2010 WL 1493847 (1st Cir. Apr. 15, 2010) (Souter, J.) (interview in prison library noncustodial), cert. denied, 131 S. Ct. 295; cf. *INS* v. *Delgado*, 466 U.S. 210, 218 (1984) (questioning of worker in factory by agents blocking exits not a seizure under the Fourth Amendment).[7] The possibility that law-enforcement officers may interview juveniles at school accordingly provides no sound basis for either a general or a school-specific extension of the *Miranda* custody test to require consideration of the psychological effects of age.

[7] Future cases, in which the location issue is presented for decision, will provide the Court with the opportunity to further explain the role that background environmental restrictions may play in the *Miranda* custody analysis. See, *e.g.*, *Howes* v. *Fields*, cert. granted, No. 10-680 (Jan. 24, 2011) (presenting question whether it is clearly established in the Court's precedents that a prisoner is always in *Miranda* custody whenever he is isolated from the general prison population and questioned about conduct occurring outside the prison).

CONCLUSION

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

Respectfully submitted.

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