No. 10-680

In the Supreme Court of the United States

CAROL HOWES, WARDEN, PETITIONER

v.

RANDALL LEE FIELDS

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The United States will address the following question:

Whether a prisoner is always "in custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), when the prisoner is isolated from the general prison population for questioning about conduct that occurred outside the prison.

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INTEREST OF THE UNITED STATES

This case presents the question whether an inmate is necessarily in custody within the meaning of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), when he is isolated from the general prison population for questioning about conduct occurring outside the prison. Although this case arises on federal habeas review of a state conviction under 28 U.S.C. 2254, the Court's view of the underlying *Miranda* question has substantial implications for federal criminal investigations and trials. Accordingly, the United States has a significant interest in this case.

STATEMENT

Following a jury trial, respondent was convicted in the Circuit Court for the County of Lenawee, Michigan,

on two counts of third-degree criminal sexual conduct, in violation of Mich. Comp. Laws Ann. § 750.520d (West Supp. 2001). Pet. App. 53a. He was sentenced to 10 to 15 years of imprisonment. *Ibid.* The Michigan Court of Appeals affirmed. *Id.* at 53a-62a. The Michigan Supreme Court denied respondent's application for leave to appeal. *Id.* at 52a.

Respondent then filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. 2254. Pet. App. 32a. The district court conditionally granted the petition. *Id.* at 32a-51a. The court of appeals affirmed. *Id.* at 2a-30a.

1. In December 2001, respondent was serving a 45-day sentence in Lenawee County, Michigan, for a disorderly conduct conviction. Pet. App. 3a; Pet. 5. On the evening of December 23, 2001, a corrections officer took respondent from his cell and escorted him to a conference room located in the sheriff's department, which was adjacent to the jail. Pet. App. 68a-69a, 77a. Deputy Batterson, a police officer, informed respondent that he and another officer wished to speak with respondent about allegations that he had had a sexual relationship with a minor, Travis Bice. *Id.* at 109a-111a. The conference room door was left open for portions of the interview, and respondent was not physically restrained. *Id.* at 70a-72a. The officers informed respondent that he was free to leave the conference room at any time, and that he did not have to cooperate. *Id.* at 4a. Respondent did not ask to go back to his cell. *Ibid.* The questioning began between 7 and 9 p.m. and ended at approximately 1 or 2 a.m., after respondent indicated that he wished to go back to his cell. *Id.* at 92a-93a; 123a.

Initially, respondent did not acknowledge that he had had a sexual relationship with Bice, but over the course of the interview, respondent admitted to engaging in sexual conduct with Bice on several occasions. Pet. App. 111a-113a; 124a-125a. Eventually, respondent asked to return to his cell. *Id.* at 92a-93a. After 20 minutes, corrections officers arrived to escort respondent back to his cell; during the wait, the police officers continued to question respondent. *Id.* at 89a, 93a.

2. a. Respondent was charged with third-degree criminal sexual conduct, in violation of Mich. Comp. Laws Ann. § 750.520d (West Supp. 2001). He moved to suppress the statement that he had made while he was in jail, arguing that he had been subject to a custodial interrogation without receiving the warnings required by *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Pet. App. 65a-66a. After a hearing at which respondent testified, see *id.* at 63a-107a, the trial court held that the absence of *Miranda* warnings did not render respondent's statement inadmissible. See Br. in Opp. App. 8a; Pet. App. 38a. The court reasoned that although respondent was incarcerated, he "was told that he was free to leave [the interview room], and granted it might have taken a couple minutes for that to be done. He knew that he could do this." Br. in Opp. App. 8a.

Following a jury trial, respondent was convicted on two counts of third-degree criminal sexual conduct and sentenced to a state term of 10 to 15 years of imprisonment. Pet. App. 5a.

b. The Michigan Court of Appeals affirmed respondent's conviction and sentence. Pet. App. 53a-62a. The court rejected respondent's argument that the trial court should have excluded the statement that respondent made while in jail. In the court's view, respondent

was "unquestionably in custody" because he was incarcerated, but because his confinement was "unrelated to the interrogation," there was no "nexus" between his custodial status and the interrogation about his sexual contact with Bice. *Id.* at 56a (quoting *People* v. *Herndon*, 633 N.W.2d 376, 394 (Mich. Ct. App. 2001), appeal denied, 642 N.W.2d 678 (Mich. 2002) (Table)). The court also reasoned that respondent was "told that he was free to leave the conference room and return to his cell," but he did not ask to leave. *Ibid.* As a result, the court concluded, "*Miranda* warnings were not required." *Ibid.*

c. The Michigan Supreme Court denied respondent's application for leave to appeal. Pet. App. 52a.

3. Respondent then filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. 2254. Pet. App. 32a. Respondent asserted, *inter alia*, that he had been subjected to custodial interrogation without being informed of his *Miranda* rights and, therefore, the state trial court should have excluded respondent's statement to Deputy Batterson. *Id.* at 34a, 38a-39a.

The district court conditionally granted the writ, holding that the state courts' admission of respondent's statement represented an "unreasonable application" of the Supreme Court's decision in *Mathis* v. *United States*, 391 U.S. 1 (1968). Pet. App. 43a; see *id.* at 36a (quoting 28 U.S.C. 2254(d)(1)), 45a. The district court observed that *Miranda* warnings are required whenever a suspect is interrogated while "in custody" and that whether a suspect is in custody for *Miranda* purposes "is determined by examining whether a reasonable person in the suspect's position would believe that he or she was free to leave." *Id.* at 41a-42a. In the court's view, the Supreme Court had held in *Mathis* that a prisoner

was "'in custody' and entitled to *Miranda* warnings before a federal agent interrogated him about an offense unrelated to the one for which he was incarcerated." *Id.* at 43a. The court interpreted *Mathis* to hold that *Miranda* applied to custodial interrogations "regardless of the reason why the suspect is in custody." *Id.* at 45a. Because, the court held, the state court had found *Miranda* inapplicable because respondent's "custody was unrelated to the crime under investigation," the state court had unreasonably applied *Mathis*. *Ibid.* Concluding that the state court's admission of respondent's statement was not harmless, the court conditionally granted habeas corpus relief. *Id.* at 45a-48a.

4. a. The court of appeals affirmed. Pet. App. 2a-30a. The court of appeals believed that the "central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison." *Id.* at 10a. Because respondent was isolated from the general jail population when he was questioned, the court held that the state court's admission of respondent's statement was "contrary to" governing Supreme Court precedent. *Ibid.*

The court of appeals found that its decision was "bolster[ed]" by *Maryland* v. *Shatzer*, 130 S. Ct. 1213 (2010). Pet. App. 18a. The court acknowledged that *Shatzer* had held that the restraints on an inmate's freedom of movement that are imposed as an incident to incarceration do not in themselves render an inmate in the general prison population in custody for *Miranda* purposes. *Id.* at 17a-18a (citing *Shatzer*, 130 S. Ct. at 1224). In the court of appeals' view, however, *Shatzer* further held that when

an inmate is questioned away from the general population, that questioning is necessarily custodial. *Id.* at 18a. In drawing that conclusion, the court relied on the *Shatzer* Court's observation that "[n]o one questions that Shatzer was in custody for *Miranda* purposes during the interviews" with law enforcement officers, 130 S. Ct. at 1224, a statement that the court of appeals interpreted as an "unambiguous conclusion" that Shatzer's in-prison interviews with law enforcement were custodial, Pet. App. 18a.

The court of appeals therefore concluded that *Mathis* and *Shatzer* gave rise to a "a bright line test," Pet. App. 18a, namely, that "[a] Miranda warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison," *id.* at 19a. Elaborating on that conclusion, the court explained that when an inmate is isolated for questioning, the questioners control the duration of the inmate's separation from the general population, which may create the impression that the inmate "has no choice but to cooperate." *Ibid.*

b. Judge McKeague concurred on the ground that the court's decision was dictated by binding Sixth Circuit precedent. Pet. App. 22a (citing *Simpson* v. *Jackson*, 615 F.3d 421 (6th Cir. 2010), petition for cert. pending, No. 10-458 (filed Oct. 4, 2010)). In Judge McKeague's view, however, *Mathis* and *Shatzer* did not establish that a person interrogated while in prison on unrelated charges "is automatically in custody or entitled to *Miranda* warnings anytime he is interrogated away from the general prison population." *Id.* at 23a. Judge McKeague therefore would have applied "the normal, context-specific analysis articulated in *Miranda*," *id.* at 24a—namely, whether a reasonable person in re-

spondent's circumstances "would have felt he or she was not at liberty to terminate the interrogation and leave," *id.* at 25a (quoting *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995)). Under that test, he would have held that the Michigan Court of Appeals' decision was neither contrary to nor an unreasonable application of this Court's precedent. *Id.* at 28a. Judge McKeague noted that respondent "was already accustomed to incarceration and its accompanying restraints," such that the need to be escorted to and from the conference room where he was interviewed was a "routine, normal feature[] of his life as an inmate." *Id.* at 29a-30a. In addition, "the fact that [respondent] was told he could leave at any time is of critical significance." *Id.* at 30a. Under those circumstances, "a reasonable person, already imprisoned on separate charges, would have felt free to terminate the encounter and leave." *Ibid.* (internal quotation marks and citation omitted).

SUMMARY OF ARGUMENT

Officers often have reason to question sentenced prisoners about other suspected criminal conduct. But not all such questioning implicates the requirements of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Prison is not, in itself, *Miranda* custody. See *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224-1225 (2010). And even when a prisoner is isolated from the general population for questioning by law enforcement officers, the restraints on the inmate's freedom of movement that arise from background restrictions incident to life in prison do not render the interrogation custodial for purposes of *Miranda*. The court of appeals therefore erred in holding that separating an inmate from the general prison population for questioning about conduct outside the prison automati-

cally implicates a requirement to give *Miranda* warnings.

A. *Miranda* established a set of procedures that police generally must follow when interrogating a suspect who is in custody, in order to protect the suspect's Fifth Amendment right against compelled self-incrimination. 384 U.S. at 467. *Miranda* identified police custody as the point at which additional procedural protections become necessary because interrogation "in a police-dominated atmosphere," *id.* at 445, generates "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," *id.* at 467. In determining whether a suspect is in custody for *Miranda* purposes, the "ultimate inquiry" is whether, in view of the objective circumstances surrounding the questioning, there has been a "'formal arrest or restraint on freedom of movement of the degree associated with a formal arrest,'" such that a reasonable person would not have felt free to terminate the interrogation and leave. *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995) (quoting *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983)). The Court has emphasized, however, that restrictions on a suspect's freedom of movement are "a necessary and not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. Even when a suspect's freedom of movement is restrained, the situation is custodial only if the circumstances "create the coercive pressures identified in *Miranda*." *Ibid.*; *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984).

B. The court of appeals imposed a bright-line rule that an inmate who is isolated for questioning about events outside the prison is always in custody. The court based its rule on *Mathis* v. *United States*, 391 U.S.

1 (1968), but that decision held only that *Miranda* can apply to inmates even when their incarceration is for a conviction unrelated to the questioning at issue. *Mathis* did not purport to announce any bright-line rule that all prison interviews are custodial. This Court's subsequent decisions confirm that the court of appeals' interpretation of *Mathis* is incorrect.

Whether an inmate isolated for questioning is in custody for *Miranda* purposes therefore turns on the traditional inquiry into the objective circumstances of the interview and whether those circumstances created the coercive pressures addressed in *Miranda*. This Court has held that restrictions incident to incarceration do not create such pressures with respect to inmates in the general prison population. *Shatzer*, 130 S. Ct. at 1224. The same is true when an inmate is isolated from the general population for questioning. Background prison restrictions may limit an inmate's freedom of movement in connection with the interrogation—for instance, by requiring that the inmate be escorted to and from the interview—but they do not exert the coercive pressure to confess that is a necessary element of *Miranda* custody. Such restrictions are expected incidents of daily prison life, rather than unfamiliar measures imposed by the questioning officers, and there is little danger that an inmate incarcerated pursuant to a conviction will view the duration or conditions of incarceration as dependent on cooperation with the interrogation.

Courts considering whether an in-prison interrogation is custodial should therefore distinguish between restrictions on the inmate that result from ordinary incidents of prison life, and additional restraints imposed in connection with the interrogation. If an inmate has not been subject to restraints beyond those incident to pris-

on life, separation from the general population does not in itself render the interview custodial. This approach is both administrable—the majority of courts of appeals already follow it—and consistent with the Court's focus on whether the circumstances of the interview create the danger of compelled confessions. The court of appeals' approach, in contrast, would hinder law enforcement and prison administration by requiring *Miranda* warnings to be given any time that an inmate is arguably separated from the general population for questioning, regardless of the surrounding circumstances. Such a rule would also provide inmates with greater protections than ordinary citizens.

C. Respondent was not in custody at the time of his interview. All of the restrictions that the court of appeals found to be coercive—the fact that respondent was escorted by corrections officers to the interrogation, the need to summon the guards before respondent could be escorted back to his cell, and the fact that the door leading back to the prison was locked—resulted from ordinary prison procedures to which respondent was already subject as part of prison life. The other circumstances of respondent's interrogation would have led a reasonable person to conclude that he was free to end the questioning. In particular, the questioning officers repeatedly informed respondent that he was free to end the interrogation, the questioning took place in a relatively comfortable setting, and the questioning was conducted in a conversational manner.

ARGUMENT

WHEN A CONVICTED AND INCARCERATED INMATE IS INTERROGATED ABOUT CONDUCT OCCURRING OUTSIDE THE PRISON, SEPARATION FROM THE GENERAL POPULATION DOES NOT BY ITSELF RENDER THE INMATE IN CUSTODY FOR *MIRANDA* PURPOSES

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)). Whether a person is in custody for purposes of *Miranda* is an objective inquiry that requires determining whether, in light of "all of the circumstances surrounding the interrogation," *ibid.*, a "reasonable person would have felt free to terminate the interview and leave," *Yarborough* v. *Alvarado*, 541 U.S.

652, 665 (2004); *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995).

The Court has described the general custody inquiry as "whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (internal quotation marks and citation omitted). But that is "only a necessary and not a sufficient condition for *Miranda* custody"; even when a suspect's freedom of movement is restrained, the situation is custodial only if the circumstances exert the coercive pressures with which the *Miranda* decision was concerned. *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224 (2010); *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984). When a prison inmate is interviewed and the restrictions to which he is subjected in connection with the interview are consistent with the ordinary restrictions that are incident to incarceration itself, there is no danger that those restraints will coerce the inmate into confessing. The court of appeals therefore erred in formulating a "bright line test" that looks only to whether the prisoner is "isolated from the general prison population." Pet. App. 18a-19a. As this case illustrates, separation from the general prison population does not necessarily entail restrictions above and beyond those incident to normal prison life or mean that a prisoner would not have felt free to terminate the encounter.

A. The *Miranda* Custody Inquiry Is An Objective Test That Focuses On Whether The Restraints On The Suspect's Freedom Of Movement Create The Danger That The Suspect Will Feel Compelled To Incriminate Himself

1. The Fifth Amendment provides that "[n]o person shall * * * be compelled in any criminal case to be a

witness against himself." U.S. Const. Amend. V. Accordingly, involuntary confessions are not admissible against the defendant. *Oregon* v. *Elstad*, 470 U.S. 298, 306-307 (1985). Before *Miranda*, this Court primarily "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, 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), overruled in part on other grounds by *Jackson* v. *Denno*, 378 U.S. 368 (1964).

In *Miranda*, the Court held that the danger that a suspect who is interrogated in police custody will feel compelled to speak warranted "prophylactic measures" to protect the suspect's Fifth Amendment right against compelled self-incrimination. *Shatzer*, 130 S. Ct. at 1219; *Miranda*, 384 U.S. at 467. The Court concluded that "incommunicado interrogation of individuals in a police-dominated atmosphere," *id.* at 445, generates "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," *id.* at 467; *Illinois* v. *Perkins*, 496 U.S. 292, 296-297 (1990). Accordingly, the Court held that before conducting a custodial interrogation, the police must inform a suspect of specified rights. *Miranda*, 384 U.S. at 467-473, 479.

Miranda identified police custody as the point at which additional protections become appropriate because a suspect in custody may feel "completely at the mercy of the police," giving rise to "pressures that

* * * impair [a suspect's] free exercise of his privilege against self-incrimination." *Berkemer*, 468 U.S. at 437-438. When a suspect is placed in custody, therefore, the *Miranda* warnings become necessary to counter the coercive effects of the police officers' control over the situation. See *Perkins*, 496 U.S. at 297.

Whether a situation rises to the level of custody "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; see *Beheler*, 463 U.S. at 1124-1125. In determining whether a suspect is in custody for *Miranda* purposes, the "ultimate inquiry" is whether there has been 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).

The Court has eschewed per se rules holding that certain situations are always custodial. See, *e.g.*, *Mathiason*, 429 U.S. at 495 (refusing to hold that police-station interviews are always custodial, even though every such interview "will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime"). Rather, in each case the Court has considered the objective circumstances surrounding the questioning, *Beheler*, 463 U.S. at 1125, including factors such as the location of the questioning, the questioners' use of force or restraints, the length of the interview, whether the person is told he

may terminate the interview, and whether the person is permitted to leave afterwards. 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); *Mathiason*, 429 U.S. at 495 (considering fact that police informed suspect that he was free to leave 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).

2. In determining whether there has been a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest," *Thompson*, 516 U.S. at 112 (quoting *Beheler*, 463 U.S. at 1125), the Court has emphasized that the restraints in question must create "those types of situations in which the concerns that powered the [*Miranda*] decision are implicated," *Berkemer*, 468 U.S. at 437. It is not enough, therefore, that the suspect's freedom of movement be restricted; rather, those restrictions must convey to the suspect that his detention and treatment turn on his cooperation. See *id.* at 437-438; *Perkins*, 496 U.S. at 296-297. The Court has accordingly twice declined to hold that restraints on a suspect's freedom of movement necessarily create a custodial situation regardless of whether those restraints created coercive pressure to confess.

In *Berkemer*, 468 U.S. at 437-439, the Court rejected the defendant's argument that a traffic stop is necessarily custodial because the motorist is not free to end the encounter until the detaining officer permits him to drive away. The Court emphasized that restraints on freedom of movement do not have "talismanic power," but rather are relevant only to the extent that they "exert[] upon a detained person pressures that sufficiently

impair his free exercise" of his Fifth Amendment privilege. *Id.* at 437. Accordingly, the Court concluded that although a traffic stop "significantly curtails the 'freedom of action of the driver,'" *id.* at 436, the "circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police," *id.* at 438. The public nature of the stop, its brief duration, and the likelihood that only one or two officers are involved "mutes [the driver's] sense of vulnerability" and makes it less likely that the driver will fear "abuse" or continued detention unless he makes incriminating statements. *Ibid.*

Similarly, in *Shatzer*, 130 S. Ct. at 1224, the Court considered "whether incarceration constitutes custody for *Miranda* purposes," and it held that an incarcerated prisoner who has been interrogated is no longer in *Miranda* custody once he is returned to the general prison population. Although the inmate necessarily continued to experience significant restrictions on his liberty as a result of his incarceration, the Court emphasized that the freedom-of-movement test "identifies only a necessary and not a sufficient condition for *Miranda* custody." *Ibid.* The concerns addressed in *Miranda* were not raised by incarceration itself, the Court held, because an inmate would not perceive his continued confinement as related to, or dependent upon, his responses to his previous questioning. *Id.* at 1224-1225. Moreover, the restrictions on the inmate represented the usual limitations attendant to prison life, rather than conditions placed on him by his questioners. *Ibid.* The Court therefore concluded that the restrictions on the inmate's freedom did not exert any coercive pressure to confess and consequently did not create a custodial situation.

B. The Baseline Restraints That Are Incident To Incarceration Do Not Render An Interview That Takes Place Apart From The General Population Custodial For *Miranda* Purposes

The court of appeals held that a prisoner who is isolated from the general population and questioned about conduct occurring outside the prison is always and automatically in custody for *Miranda* purposes. That bright-line rule has no basis in this Court's precedents. Whether an inmate's questioning is custodial turns on the traditional custody analysis—namely, on whether the totality of the circumstances establishes that a reasonable person in the inmate's position would have felt pressure to cooperate with the questioning instead of terminating the interview. See *Thompson*, 516 U.S. at 112. In making that determination, it is necessary "to separate the restrictions on [a suspect's] freedom arising from police interrogation and those incident to his background circumstances." *United States* v. *Jamison*, 509 F.3d 623, 629 (4th Cir. 2007). Restrictions on an inmate's freedom of movement that arise from the ordinary restrictions of incarceration do not create the coercive pressures with which *Miranda* was concerned, and isolation from the general population therefore does not have the talismanic force that the court of appeals attributed to it.

1. This Court has not instituted a per se rule that all questioning of an inmate is custodial

The court of appeals based its bright-line rule on *Mathis* v. *United States*, 391 U.S. 1 (1968), which the court interpreted as holding that "a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated

* * * about conduct occurring outside the prison." Pet. App. 10a. To the contrary, *Mathis* announced no such rule, and this Court's subsequent decisions confirm that the court of appeals' interpretation of *Mathis* is incorrect.

In *Mathis*, an inmate was questioned at a state prison by a federal agent about tax offenses that were unrelated to the conviction for which he was imprisoned. The inmate later sought to suppress his statements on the ground that the agent had not informed him of his *Miranda* rights. *Mathis*, 391 U.S. at 2-3. The Court understood the government to seek "to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation." *Id.* at 4. The Court rejected that proposed per se rule, holding that *Miranda* was not inapplicable simply because "petitioner had not been put in jail by the officers questioning him, but was there for an entirely separate offense." *Ibid.*; see *id.* at 7-8 (White, J., dissenting) (stating that he would have held that "[t]he rationale of *Miranda* has no relevance to inquiries conducted outside the allegedly hostile and forbidding atmosphere surrounding police station interrogation of a criminal suspect").

The Court did hold that Mathis's statements to the agent should have been suppressed, and the necessary premise of that conclusion is that Mathis was in custody for *Miranda* purposes when he was questioned by the agent. See *Mathis*, 391 U.S. at 5. But the *Mathis* Court did not purport to establish a bright-line rule that an inmate is always in *Miranda* custody once he is separated from the general prison population for questioning—and it is highly unlikely that the Court would have announced such a sweeping rule *sub silentio*. Indeed, it

is not even apparent from the *Mathis* decision whether Mathis was in fact isolated from the general population when he was questioned, or whether the Court viewed that circumstance or any other as having legal significance in the custody analysis. See *id.* at 2-3; *United States* v. *Ellison*, 632 F.3d 727, 730 n.1 (1st Cir.) (Souter, J.) (noting the Court did not "say whether the interview with Mathis fell within *Miranda* because of his incarceration or because of some other deprivation that was significant in the circumstances"), cert. denied, 131 S. Ct. 295 (2010). Therefore, *Mathis*'s limited holding rejected the government's proposed per se rule that *Miranda* should not be applicable to an inmate who is incarcerated in connection with a case other than the one under investigation, but the decision did not establish the opposite per se rule that all questioning of an inmate who is separated from the general population *is* custodial interrogation.

This Court's subsequent decisions further underscore that *Mathis* did not impose the bright-line rule espoused by the court of appeals. The Court has stated that it has never addressed—much less established a per se rule governing—the question whether questioning an incarcerated inmate is necessarily custodial for *Miranda* purposes. See *Perkins*, 496 U.S. at 299 ("The bare fact of [prison] custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here."). More generally, since *Mathis*, the Court has refused to institute per se rules that particular situations are custodial based on the existence of a generalized "coercive environment," *Mathiason*, 429 U.S. at 495, or the inability to end an encounter at will, see *Berkemer*, 468 U.S. at 437; pp. 15-16, *supra*. In-

stead, it has held that the *Miranda* custody inquiry focuses on whether, in view of all the circumstances, the restrictions placed on an individual give rise to the danger of coercion addressed in *Miranda*. See pp. 15-16, *supra*. Had *Mathis* held that questioning of inmates is always custodial, regardless of the circumstances surrounding the interrogation, it would stand apart from the Court's other decisions, all of which emphasize the context-specific nature of the custody inquiry.

If there were any remaining doubt about *Mathis*'s reach, *Shatzer* removes it. *Shatzer* held that whether the restraints of prison create a custodial situation "depends upon whether [they] exert[] the coercive pressure that *Miranda* was designed to guard against" and that the "baseline set of restraints" incident to residence in the general prison population does not create the requisite coercive pressures to confess. 130 S. Ct. at 1224-1225. The court of appeals believed that *Shatzer* held that prison interviews that take place away from the general population are always custodial. Pet. App. 14a, 18a. But *Shatzer* did not address that question. As the Court observed, the parties agreed that Shatzer's in-prison interviews had been custodial, see 130 S. Ct. at 1224 ("[n]o one questions that Shatzer was in custody for *Miranda* purposes during the interviews with Detective Blankenship"), and thus the Court had no need to decide under what circumstances a prison interview would be custodial. In all events, although the Court left open that question, its discussion of prison restraints in the context of the general prison population confirms that in analyzing the interaction of baseline prison restraints and police questioning, the key question is whether those restraints by themselves give rise to coercive

pressure to cooperate with the questioning that implicates *Miranda*. See pp. 23-24, *infra*.

2. When an inmate isolated for questioning is subjected only to the baseline restrictions that are incident to incarceration, those restraints do not render the interrogation custodial

Whether an inmate is in custody for *Miranda* purposes when he is questioned away from the general prison population thus turns on the traditional custody inquiry: whether the objective circumstances of the interview create the danger of compelled confessions that the *Miranda* warnings are designed to address. See *Thompson*, 516 U.S. at 112; see also *Shatzer*, 130 S. Ct. at 1224; *Berkemer*, 468 U.S. at 437. In applying the custody analysis in the prison context, *Shatzer* established that an inmate returned to the general population after questioning is not in custody because the ordinary restrictions incident to incarceration are an expected part of the inmate's daily life that are unlikely to coerce him into confessing. 130 S. Ct. at 1224. For many of the same reasons, when an inmate is questioned away from the general population, background prison restrictions that come into play during the interview cannot convert a "noncustodial situation * * * to one in which *Miranda* applies." *Mathiason*, 429 U.S. at 495.

As the Court has observed, "all forms of incarceration" impose severe restrictions on a prisoner's freedom of movement. *Shatzer*, 130 S. Ct. at 1224. Restraints incident to incarceration may affect the circumstances surrounding an inmate's interview with law enforcement officers in a number of ways. For instance, the prison's ordinary procedures may require that a prisoner be escorted to and from the interview or require that certain

security measures be taken during the interview. Although these restrictions may leave the inmate with less freedom of movement than he would have if the interview took place outside of prison, when the restrictions that an inmate experiences during an interview arise as a result of incarceration rather than as a result of the process of interrogation, they do not give rise to the coercive pressures addressed in *Miranda*. That is so for several reasons.

First, because inmates expect to be subject to the background restraints of incarceration, applying those restrictions in an interview setting does not subject the inmate to the type of unfamiliar restraints that can create to coercive pressures. See *Miranda*, 384 U.S. at 457, 461. Restrictions on movement are part of an inmate's "daily routine," and an inmate ordinarily does not expect to have complete control over his movements within the prison or freedom from the security measures designed to ensure that inmates do not engage in illicit conduct or attempt to escape. See *Shatzer*, 130 S. Ct. at 1224. When an inmate is escorted to or from an interview by corrections officers, or subjected to ordinary prison security measures during the interview, then, he is experiencing the usual "degree of control" over his movements that he expects as a prisoner. *Ibid.*; see, *e.g.*, *United States* v. *Conley*, 779 F.2d 970, 973-974 (4th Cir. 1985) (fact that inmate interviewed in infirmary was in handcuffs and restraints during interview did not render interview custodial, because prison procedures called for such restraints during stays in the infirmary), cert. denied, 479 U.S. 830 (1986). Knowing what to expect, the inmate is not "thrust into an unfamiliar atmosphere" by the prison restraints. *Miranda*, 384 U.S. at 457.

Second, ordinary prison restraints do not create the impression that the inmate is at the mercy of the questioning officers, or that his treatment at the hands of the questioners depends on whether he cooperates with the interrogation. See *Perkins*, 496 U.S. at 296-297 (fear of reprisal for silence, or hope of more lenient treatment in return for confessing, are key components of coercion). Such restrictions are part and parcel of ordinary prison life, rather than restraints that are imposed by the questioning officers as an incident to interrogation.

Even when a prisoner is removed from his usual surroundings for questioning, the duration of the prisoner's questioning is not necessarily wholly "dependent on his interrogators," *Shatzer*, 130 S. Ct. at 1225 n.8, in the sense that triggers *Miranda*. It is true that prison restrictions may limit the inmate's ability simply to walk out of the interview of his own accord, and it may be necessary for the questioning officers to set in motion the process of having the inmate escorted back to the general population. But that is a function of being a prisoner. It does not signal that the prisoner is subject to incommunicado interrogation that he is powerless to end. Cf. Pet. App. 30a (McKeague, J., concurring) (emphasizing that "the state court rightly noted that the fact that [respondent] was told he could leave at any time is of critical significance"). Although the court of appeals believed that "[t]he sense of control exercised by interrogators over the prisoner in determining the length of the prisoner's removal from his normal life" establishes that questioning away from the general population is always custodial, *id.* at 19a, official questioners can communicate to the inmate, through words or through the surrounding circumstances, that he is at liberty to decline to cooperate and may return to his cell

or other activities if he wishes. The inmate's inability to walk back to his cell unescorted does not, without more, render him "completely at the mercy of the police." *Berkemer*, 468 U.S. at 438. The restriction's source in ordinary prison procedures, rather than the officer's control of the interrogation, "substantially offset[s]" any coercive effect. *Id.* at 438-439; see, *e.g.*, *Ellison*, 632 F.3d at 730 (finding interview non-custodial in part because inmate was free to summon the guards and ask them to escort him back to his cell).

Third, incarceration pursuant to a conviction does not render questioning custodial because the inmate ordinarily should have little concern that the duration of incarceration or the conditions of confinement are dependent on cooperation with the interrogation. Because the interrogator has no apparent "power to increase the duration of incarceration, which was determined at sentencing" or to "decrease the time served," the inmate's continued detention does not appear to "rest[] with those controlling [the] interrogation," and thus there is no danger that the inmate will feel compelled to cooperate by the prospect of leniency or the threat of continued detention.[1] *Shatzer*, 130 S. Ct. at 1224-1225. Of course, if the questioning officers credibly threaten an inmate with more severe conditions of confinement than normally imposed, or if prison procedures penalize inmates for refusing to cooperate with questioning, then the prospect of those additional restraints that are directed to the inmate's response to interrogation might create

[1] In that sense, an inmate incarcerated pursuant to a conviction is differently situated from someone held in jail on pending charges. The latter individual can easily imagine that his continued incarceration, and what charges he faces, may be affected by whether he cooperates with authorities. See *Shatzer*, 130 S. Ct. at 1225.

coercive pressures that would be relevant to the custody analysis. Cf. *Georgison* v. *Donelli*, 588 F.3d 145, 149 (2d Cir. 2009) (noting the absence of prison rule imposing penalties for failing to cooperate as evidence that inmate was not subjected to any restraints beyond those arising from ordinary confinement). Absent specific circumstances linking the inmate's prison treatment with his cooperation with the interrogation, however, an inmate will have no reason to think that his cooperation will have any effect on his incarceration.

In sum, in making the *Miranda* custody assessment, it is necessary to distinguish between the restrictions that are imposed in connection with police interrogation and those that are "incident to [the prisoner's] background circumstances." *Jamison*, 509 F.3d at 629. If the inmate was not subjected to any restrictions different from the restraints incident to incarceration—such as prison rules governing inmate movement and security—the restraints could not have contributed to any sense of coercion within the interrogation and therefore do not render the interview custodial. Accordingly, separating an inmate from the general prison population for questioning does not automatically implicate a requirement to give *Miranda* warnings.

3. The Sixth Circuit's rule would have detrimental consequences

The court of appeals' bright-line rule that prisoners isolated for questioning about conduct outside the prison are always in custody for *Miranda* purposes would have a number of adverse consequences. The rule would place prisoners in a more favorable position than ordinary citizens, as it would entitle them to *Miranda* warnings before every instance of questioning, regardless of

the surrounding circumstances. See *Cervantes* v. *Walker*, 589 F.2d 424, 427 (9th Cir. 1978) ("Adoption of [the Sixth Circuit's rule] would not only be inconsistent with *Miranda* but would torture it to the illogical position of providing greater protection to a prisoner than to his nonimprisoned counterpart."). The court's rule could also disrupt prison administration by requiring *Miranda* warnings any time that an inmate is arguably separated from the general population for questioning about conduct outside the prison, even when corrections officers have private but informal conversations with inmates or an inmate voluntarily seeks out a corrections official. See *Conley*, 779 F.2d at 973. In addition, although the court limited its rule to questioning about conduct occurring outside the prison, see Pet. App. 19a, the court's logic would seem to extend to questioning about events inside the prison when the inmate is separated from the general population for questioning.

The court of appeals claimed that a virtue of its bright-line rule governing questioning of prisoners isolated from the general population is its ease of application. See Pet. App. 20a. But the costs of a rule that applies *Miranda* to the type of questioning that does not implicate its concerns cannot be justified solely by administrative convenience. In *Berkemer*, for example, the Court recognized that its rejection of a per se rule requiring *Miranda* warnings in all traffic stops "will mean that the police and lower courts will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody," but a per se rule "has drawbacks that make it unacceptable," including "imped[ing] the enforcement of the Nation's traffic laws." 468 U.S. at 441; cf. *McNeil* v. *Wisconsin*, 501 U.S. 171, 182 (1991) (preference for "clear and unequivocal" rules

is warranted "only when they guide sensibly and in a direction we are authorized to go"). Here, the Sixth Circuit's rule would frustrate the investigation of criminal activity through non-coercive questioning, even when officers assure the suspect of his freedom to end the questioning subject only to normal conditions of prison life. Cf. Pet. App. 13a (discounting the officer's informing respondent that he could end the interview at any time because doing so would require the assistance of a corrections officer).

By contrast, a rule holding that baseline restrictions incident to imprisonment do not render an interview custodial is workable and consistent with the context-specific nature of the custody inquiry. Aside from the Sixth Circuit, the courts of appeals to have addressed the issue—as well as many state courts—already follow this approach, and they have been able to distinguish between ordinary background restrictions incident to incarceration and additional restrictions imposed for the purpose of the interrogation itself. See, *e.g.*, *Conley*, 779 F.2d at 973-974; see also, *e.g.*, *Commonwealth* v. *Smith*, 924 N.E.2d 270, 275-276 (Mass. 2010) (finding interview noncustodial because the use of handcuffs and the presence of a guard during the interview arose from customary prisoner-movement procedures; the fact that the inmate was not told that he was free to end the interview was not dispositive in light of the non-intimidating setting and cordial questioning); *People* v. *Patterson*, 588 N.E.2d 1175, 1180 (Ill.), cert. denied, 506 U.S. 838 (1992). When the ordinary restrictions incident to confinement are altered in connection with the interview in question, any additional restrictions may be considered in determining whether the interview is custodial for *Miranda* purposes. See *Berkemer*, 468 U.S. at 440 (re-

strictions ordinarily incident to a traffic stop do not create a custodial situation, but "[i]f a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*"). This view thus does not place the prisoner in any worse position than a non-imprisoned citizen: depending on the circumstances created in connection with the interrogation itself, some inmates will be in custody for *Miranda* purposes, and others will not.[2] See *id.* at 437-439.

C. Respondent Was Not In Custody For *Miranda* Purposes When He Was Interrogated

For the reasons stated above, the court of appeals erred in concluding that purely "[b]ecause [respondent] was removed from the general prison population for interrogation about an offense unrelated to the one for which he was incarcerated," Pet. App. 13a, he was necessarily in custody for *Miranda* purposes. An analysis of the objective circumstances surrounding respondent's interrogation, keeping in mind that the restrictions on respondent's freedom of movement were simply incident to his incarceration, demonstrates that respondent was not in custody when he was interrogated.

Respondent's interrogation occurred during his incarceration for a disorderly conduct conviction, and he

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[2] Moreover, because the Court has "never abandoned [its] due process jurisprudence, and thus continue[s] to exclude confessions that were obtained involuntarily," *Dickerson*, 530 U.S. at 434, an inmate is always free to argue that aspects of his ordinary conditions of confinement created psychological effects that rendered his confession involuntary, irrespective of whether he was in custody when the statements were made.

had no reason to think that his cooperation would have any impact on the length or conditions of his confinement. The questioning took place in a "conference room" that was located outside of the jail, in the adjoining sheriff's department, and that was large enough to hold a conference table, chairs, and a desk. The conference room door was open during parts of the interview. Pet. App. 70a-72a, 88a-89a, 122a-123a. Respondent was escorted from his cell to the conference room by corrections officers through a locked door between the jail and the sheriff's department. *Id.* at 72a, 77a-78a. The interviewing officers informed him that he was free to end the interview whenever he wanted, and they reminded him of that fact later in the interview. *Id.* at 89a, 124a-126a; see *id.* at 55a ("Deputy Batterson told [respondent] he was free to leave the conference room and return to his jail cell."). Respondent acknowledged that he was never threatened with any consequences if he refused to cooperate; he was not physically restrained or touched by the officers; and he was offered water during the interview. *Id.* at 97a-98a. Respondent also testified that the interview was conducted in a conversational manner and that the officers answered the questions that respondent posed to them. *Id.* at 99a. Although respondent asserted that one of the officers raised his voice and used profanity in telling respondent to sit down, respondent stated that the officer followed up by telling him that "if I didn't want to cooperate, I could leave." *Id.* at 89a. After five to seven hours of questioning, respondent indicated that he wished to return to his cell, and corrections officers arrived in 20 minutes to escort him back to his cell. *Id.* at 89a, 123a-124a, 130a; see *id.* at 56a.

In concluding that these circumstances "unquestionably" were custodial, the court of appeals erroneously emphasized that respondent was "taken from his prison cell to a conference room without explanation," that the conference room was locked, and that "exiting the conference room was a lengthy process that required a corrections officer to be summoned." Pet. App. 13a. None of these restrictions went beyond the ordinary restraints incident to respondent's incarceration. Respondent acknowledged that he was not ever permitted to "roam around" the jail unescorted and that as a matter of experience and "common sense," he expected that returning to his cell would involve being escorted, either by the police officers or the jail guards. *Id.* at 91a-92a. Although respondent testified that the door separating the jail from the sheriff's department was locked, so that he could not have re-entered the jail on his own, *id.* at 72a; that fact is attributable to ordinary prison security procedures.[3] Moreover, although respondent had to wait 20 minutes for the guards to arrive to escort him back to his cell, he has not asserted that the wait resulted from anything other than the normal procedures for summoning the guards, and thus the wait did not render the interview custodial.[4] In sum, the restraints

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[3] Although the court of appeals asserted that the conference room door was locked, Pet. App. 13a, respondent actually testified that the conference room door was in fact ajar for parts of the interview, *id.* at 70a, and the state courts did not make any findings on the issue. Only the door permitting entry into and exit from the jail was locked. See *id.* at 72a.

[4] Respondent testified that the officers continued to question him during the 20-minute wait even though he told the officers that he did not want to talk to them anymore. See Pet. App. 93a. But even during that brief interval of time, respondent knew that he was free to term-

on respondent's freedom of movement on which the court of appeals focused were simply the ordinary incidents of incarceration, and thus they did not render the interview custodial for *Miranda* purposes.

Nor did any of the other circumstances of the interview create the sort of "police-dominated" atmosphere with which *Miranda* is concerned. Respondent was informed repeatedly that he was free to discontinue the interview, and although it lasted several hours, respondent had the option of terminating it sooner. See *Mathiason*, 429 U.S. at 495; see also, *e.g.*, *United States* v. *King*, 604 F.3d 125, 138-139 (3d Cir. 2010) (several-hour duration of questioning was offset by FBI agents' informing suspect that he was free to terminate the interview), cert. denied, 131 S. Ct. 1467 (2011); *Mason* v. *Mitchell*, 320 F.3d 604, 631-632 (6th Cir. 2003) (same). The conference room in which the interview occurred was not claustrophobic, Pet. App. 88a, and it was designed for internal police department, rather than prison, use. Cf. *Ellison*, 632 F.3d at 730 (interview in prison library took place in a relatively comfortable setting). Although the questioning officers were armed, Pet. App. 74a, police officers are often armed when they question suspects—including at traffic stops, which the Court has held do not generally create the coercive pres-

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inate the encounter. And, in any event, respondent has not asserted that his confession occurred during that period. See Br. in Opp. 6; Pet. App. 124a-125a.

sures incident to custody.[5] See *Berkemer*, 468 U.S. at 437-439; *Mathiason*, 429 U.S. at 495.

In sum, respondent's statements were made during a noncustodial interrogation, and *Miranda* warnings were not required. The Michigan trial court therefore properly admitted respondent's statements at trial.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MAY 2011

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[5] Respondent also argues that the interview setting was coercive because the interview continued through the time at which his medications were ordinarily dispensed. Br. in Opp. 14-15. There is no indication in the record, however, that the officers were aware that respondent needed to take his medications and refused to let him do so. Respondent's subjective, uncommunicated concern is therefore not relevant to the custody analysis. See *Beheler*, 463 U.S. at 1124-1125 & n.3; see also *Minnesota* v. *Murphy*, 465 U.S. 420, 433 (1984) (concern that probation might be revoked was not sufficient to render individual in custody).