No. 10-458

In The
Supreme Court of the United States

MICHAEL SHEETS,
Petitioner,

v.

DONOVAN E. SIMPSON,
Respondent.

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

BRIEF OF AMICI CURIAE STATES OF MICHIGAN AND COLORADO, DELAWARE, IDAHO, LOUISIANA, NEVADA NEW MEXICO, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, AND UTAH, AND IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Is a prison inmate "in custody" for *Miranda* purposes if law enforcement officers isolate and question him about criminal conduct occurring outside the prison but impose no additional restraints or coercive pressures beyond those inherent in ordinary prison confinement?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Blank Page

INTEREST OF AMICUS CURIAE

The U.S. Court of Appeals for the Sixth Circuit has granted habeas relief under the Antiterrorism and Effective Death Penalty Act (AEDPA) to State prisoners based on a new "bright-line approach" for *Miranda v. Arizona*, 384 U.S. 436 (1966). Under this new rule, *Miranda* warnings are required when law enforcement officers remove an inmate from the general prison population and interrogate that inmate regarding criminal conduct that took place outside of the jail or prison. *Simpson v. Jackson*, 615 F.3d 421 (6th Cir. 2010).[1] The amici States urge this Court to grant Ohio's petition for certiorari for the following reasons.

First, contrary to the Sixth Circuit's decision, this Court has never established that an incarcerated defendant is entitled to *Miranda* warnings whenever questioned away from the general prison population regardless of the surrounding circumstances. In fact, this Court has expressly stated that it has not set forth the parameters of custody in the prison context.

Second, no other circuit has ever read this Court's precedent to clearly establish any bright-line rule equating incarceration with *Miranda* custody. To the contrary, the majority of circuits have held that this Court's precedent does not establish such a rule.

Finally, the new bright-line rule created by the Sixth Circuit is arbitrary and fails to address the

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[1] *See also Fields v. Howes*, 617 F.3d 813 (6th Cir. 2010).

very purpose for which *Miranda* was created: to relieve the inherent coercive pressure of custodial interrogation. There is no reason to presume that the location of the questioning, i.e., a prison setting, is automatically coercive with no consideration of the surrounding circumstances.[2]

[2] Consistent with Supreme Court Rule 37.2, the State of Michigan informed the counsel for Respondent of its plan to file an amicus brief in support of Petitioner.

ARGUMENT

A prison inmate is not "in custody" for *Miranda* purposes merely because law enforcement officers isolate and question him about criminal conduct occurring outside the prison but impose no additional restraints or coercive pressures beyond those inherent in ordinary prison confinement.

This case goes beyond the creation of a new constitutional rule to the broader question of how the federal courts review habeas petitions under the AEDPA.

Prior to AEDPA, the circuits were free to rely on their own precedent when determining clearly established federal law. *See Williams v. Taylor*, 529 U.S. 362, 381 (2000); *Lindh v. Murphy*, 96 F.3d 856, 869 (7th Cir. 1996). A significant change introduced by AEDPA, however, was to limit "clearly established Federal law" to the holdings of this Court. 28 U.S.C. § 2254(d)(1); *Williams*, 529 U.S. at 381. "A rule that 'breaks new ground or imposes a new obligation on the States or the Federal Government' falls outside this universe of federal law." *Williams*, 529 U.S. at 381. *See also Knowles v. Mirzayance*, 129 S. Ct. 1411, 1419 (2009); *Wright v. Van Patten*, 552 U.S. 120, 123 (2008); *Carey v. Musladin*, 549 U.S. 70, 77-78 (2006).

Nevertheless, the Sixth Circuit has granted habeas relief under AEDPA to a state prisoner based on a specific legal rule for *Miranda* cases that has never been held by this Court.

Under the traditional test for *Miranda* custody, a reviewing court makes an objective assessment of all relevant circumstances surrounding an interrogation to determine whether a reasonable person would feel free to terminate the interrogation. *Yarborough v. Alvarado*, 541 U.S. 652, 663 (2004). Relying on *Mathis v. United States*, 391 U.S. 1 (1968), the Sixth Circuit has now held that *Miranda* warnings are always required whenever a prisoner is questioned away from the general prison population – regardless of the surrounding circumstances or whether a reasonable person would feel free to end the questioning:

> Here, as in *Mathis*, state agents unaffiliated with the prison isolated an inmate and questioned him about an unrelated incident without first giving *Miranda* warnings. The Supreme Court ruled that such action was improper and that any resulting statements must be suppressed. As there is no material factual distinction, the [inmate's] statements were admitted contrary to Supreme Court precedent. [*Simpson v. Jackson*, 615 F.3d 421, 441-42 (6th Cir. 2010) (footnote omitted).]

This holding creates a rule from *Mathis* that all such questioning must be preceded by the *Miranda* warnings. As the Sixth Circuit explained in the case that followed *Simpson*, this rule imposed a "bright line approach" on law enforcement. *Fields v. Howes*, 617 F.3d 813, 823 (6th Cir 2010) ("This bright line approach will obviate fact-specific inquiries by

lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population. Furthermore, law-enforcement officials will have clearer guidance for when they must administer *Miranda* warnings prior to a prison interrogation.").

But this "bright-line approach" has never been clearly established by this Court. Quite the contrary, this Court has expressly noted that it has never set forth the parameters for custody in the context of a prison. Nor has any other circuit read this bright-line rule into the holdings of this Court. Finally, the bright line created by the Sixth Circuit is arbitrary and fails to serve the purpose for which *Miranda* was crafted.

A. A lower court should not grant habeas relief based on its independent answer to a question that has been expressly left open by this Court's precedent.

The new rule created in *Simpson* is based on an overly broad interpretation of *Mathis*, 391 U.S. at 1. Shortly after *Miranda* was decided, the government challenged its application to prisoners already in custody for unrelated offenses. The defendant in *Mathis* was incarcerated when he was questioned by IRS agents about his tax returns. He was not advised that his answers could form the basis of a criminal prosecution nor given the *Miranda* warnings. Finding that the defendant was subjected to a custodial interrogation, this Court concluded that his statements should have been excluded under *Miranda*.

Critically, however, the issue of whether the defendant was in custody for purposes of *Miranda* was not challenged. The government's position was that *Miranda* should not apply at all to suspects already in custody on an unrelated offense because they are not being held for the purpose of questioning. This Court rejected that argument, stating that "We find nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Mathis*, 391 U.S. at 5.

While the Court refused to curtail *Miranda's* application to prisoners, nothing in *Mathis* suggests that prisoners are entitled to any greater protection than the general public or that the *Miranda* test applies differently to prisoners. Nor does *Mathis* set forth a bright-line rule that prisoners are always entitled to *Miranda* warnings whenever they are questioned away from the general prison population.

In support of its interpretation of *Mathis*, the Sixth Circuit relied on this Court's recent decision in *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010). Far from supporting its holding, however, *Shatzer* underscores the Sixth Circuit's error.

The issue in *Shatzer* was whether a lapse in custody of two years was sufficient to vitiate a suspect's invocation of his right to counsel during questioning. Although custody was not at issue, *Shatzer* provides this Court's most recent discussion of custody in a prison setting. Rather than

recognizing any bright-line rule that prisoners are always entitled to *Miranda* warnings when questioned away from the general prison population, however, the Court observed:

> We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue. [*Shatzer*, 120 S. Ct. at 1224.]

This analysis is referring to *Illinois v. Perkins*, 496 U.S. 292 (1990), in which the Court considered whether statements made to an undercover officer placed in the defendant's prison cell are admissible despite the failure to give *Miranda* warnings. Writing for the majority, Justice Kennedy observed that: "The bare fact of 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." *Id.* at 299. *See also Bradley v. Ohio*, 497 U.S. 1011, 1012 (1990) (Marshall, J., dissenting) (noting this Court has never clarified what constitutes *Miranda* custody in the prison setting).

Despite the fact that *Shatzer* expressly disclaims having ever decided whether incarceration constitutes *Miranda* custody, the Sixth Circuit relies on a footnote in which the Court distinguished between custody as part of routine incarceration and being removed from the general population for questioning:

> "We distinguish the duration of incarceration from the duration of what might be termed interrogative custody. When a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of that separation is assuredly dependent upon his interrogators" such that the period of "interrogative custody" constitutes *Miranda* custody. [*Shatzer*, 130 S. Ct.] at 1225 n. 8. Though not controlling because *Shatzer* post-dates the state court's decision in Simpson's case, it is clear that the Supreme Court would find that Simpson's April interviews occurred while he was in *Miranda* custody. [*Simpson*, 615 F.3d at 442.]

As in *Mathis*, however, custody was not at issue in *Shatzer*. The fact that custody was not challenged does not clearly establish precedent for purposes of AEDPA. The footnote from *Mathis* relied on by the Sixth Circuit did not create a bright-line rule that any removal from the general population equals *Miranda* custody. Rather, this Court merely explained that the custody – which had not been disputed in *Shatzer* – ended when the defendant was returned to the general population.

It is well settled that "clearly established Federal law" is limited to the holdings, as opposed to the dicta, of this Court's decisions. *Williams*, 529 U.S. at 412. Simply setting forth what is and is not

at issue in a particular case falls short of even dicta, let alone a clearly established holding.

Indeed, shortly after *Shatzer* was decided, Justice Souter wrote for the First Circuit in denying a defendant's claim that incarceration automatically equals custody for *Miranda* purposes. *United States v. Ellison*, Case No. 09-1234, 2010 U.S. App. LEXIS 7814 (1st Cir. Apr. 15, 2010). Writing for that court, Justice Souter explained that the restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody." *Id.* at *6. In fact, Justice Souter relied on the discussion in *Shatzer* to reject reading *Mathis* as having created a bright-line rule:

> [In *Mathis*, the] Court acknowledged *Miranda*'s applicability to questioning "'when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way,'" *id.* at 5 (quoting 384 U.S. at 478), but 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. Although it did not address *Mathis*, the Court's opinion in *Shatzer* forecloses Ellison's reading of the case for the former proposition. [*Id.* at *7.]

While the Sixth Circuit lacked the benefit of Justice Souter's opinion when deciding this case, the

limited application of *Mathis* is apparent if not from the opinion itself, then certainly from this Court's repeated and express observation that it has never established the parameters of *Miranda* custody in the prison setting.

B. No other circuit has interpreted this Court's precedent to clearly establish the bright-line rule now created by the Sixth Circuit.

Under § 2254(d)(1), "clearly established Federal law" is expressly limited to the holdings of this Court. *Williams*, 529 U.S. at 412. But that does not mean that decisions from lower courts are irrelevant. To the contrary, the issue on habeas review is whether the State court's interpretation and application of this Court's precedent could be deemed "objectively unreasonable." *Wiggins v. Smith*, 539 U.S. 510, 520-521 (2003); *Williams*, 529 U.S. at 411. In making that determination, the interpretation and application of this Court's precedent by other federal courts provides context to the reasonableness of the State court's interpretation. *See Price v. Vincent*, 538 U.S. 634, 643 n. 2 (2003).

Such is the case here. Like the State court decision under review, the majority of circuits have interpreted *Mathis* to simply apply the *Miranda* requirements to prisoners rather than creating any per se rule that prisoners are automatically in custody for *Miranda* purposes.

The earliest case to consider whether *Mathis* created a bright-line rule appears to be *Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978). In that case, a corrections officer questioned a prisoner about drugs found in his cell without first giving the *Miranda* warnings. On habeas review, the prisoner claimed that *Miranda* warnings were required because his incarceration automatically amounts to custody under *Mathis*. The Ninth Circuit rejected the claim that *Mathis* creates such a per se rule finding that such an interpretation "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 non-imprisoned counterpart." *Cervantes*, 589 F.2d at 427.

Instead of reading a bright-line rule into *Mathis*, the Ninth Circuit considered the purpose that *Miranda* was created to serve: to protect against the coercive pressure inherent in a custodial interrogation. In that regard, the court correctly reasoned that the freedom-of-movement test provides little assistance in a prison setting. A prisoner will rarely feel free to move about at will. Yet that very same fact reduces the inherent pressures of mere custody as prisoners are accustomed to and indeed expect restrictions upon their movement as a part of daily prison life. *Cervantes*, 589 F.2d at 428.

Therefore, the Ninth Circuit reasoned that the best way to serve the purpose of *Miranda* is to assess whether and to what extent greater restrictions were placed on the prisoner during questioning, factors such as: (1) the language used to summon the prisoner; (2) the physical surroundings of the

interrogation; (3) the extent to which officials confront the prisoner with evidence of guilt; and (4) whether officials exerted any additional pressure to detain the prisoner. *Cervantes*, 589 F.2d at 428. Thus, the court rejected the conclusion that *Mathis* created a bright-line test, and instead adopted a test designed to serve the purpose of *Miranda*.

Standing alone, *Cervantes* might not provide a sufficient basis to conclude that a similar ruling by a State is reasonable for purposes of the AEDPA. But *Cervantes* is not alone. In fact, in the 42 years since *Mathis* was decided, no other circuit has divined from its holding the bright-line rule now set forth by the Sixth Circuit – not even the Sixth Circuit itself:

1st Cir.	Restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody." *United States v. Ellison*, Case No, 09-1234, 2010 U.S. App. LEXIS 7814, at *2 (1st Cir. Apr. 15, 2010).
2nd Cir.	"In addition to rejecting an interpretation of *Mathis* that all prisoners are 'in custody' for purposes of *Miranda*, we conclude that the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here." *Georgison v. Donelli*, 588 F.3d 145, 157 (2d Cir. 2009).

3rd Cir.	"[W]hile *Miranda* may apply to one who is in custody for an offense unrelated to the interrogation, incarceration does not *ipso facto* render an interrogation custodial." *Alston v. Redman*, 34 F.3d 1237, 1245 (3rd Cir. 1994), *cert. denied,* 513 U.S. 1160 (1995).
4th Cir.	"Nothing in [*Mathis*] suggests that an inmate is automatically 'in custody' and therefore entitled to *Miranda* warnings, merely by virtue of his prisoner status." *United States v. Conley*, 779 F.2d 970, 972 (4th Cir. 1985), *cert. denied,* 479 U.S. 830 (1986).
6th Cir.	"Likewise, prisoners are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been "a restriction of [the prisoner's] freedom over and above that of his normal prisoner setting." *United States v. Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999).
7th Cir.	"While it is undisputed that the defendant was incarcerated for an unrelated crime, we conclude that Menzer was not 'in custody" for the purposes of *Miranda* because there was no 'added imposition on his freedom of movement' nor 'any measure of compulsion above and beyond [imprisonment].'" *United States v. Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994), *cert. denied,* 513 U.S. 1002 (1994).

8th Cir.	"While *Miranda* may apply to one who is in custody for an offense unrelated to the interrogation . . . incarceration does not *ipso facto* render an interrogation custodial." *Leviston v. Black*, 843 F.2d 302, 304 (8th Cir. 1988), *cert. denied,* 488 U.S. 865 (1988).
9th Cir.	"[T]o determine whether *Miranda* warnings were necessary in a prison setting, 'we look to some act which places further limitations on the prisoner.'" *United States v. Turner*, 28 F.3d 981, 983 (9th Cir. 1994), *cert. denied,* 513 U.S. 1158 (1995).
10th Cir.	"We agree with the district court's reliance on *Cervantes v. Walker*[.]" *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984).
11th Cir.	"After reviewing the relevant law, we find the reasoning employed in *Cervantes* and *Conley* highly persuasive." *Garcia v. Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994), *cert. denied,* 513 U.S. 908 (1994).

The Sixth Circuit's misapplication of the AEDPA standard ignores these cases. The Sixth Circuit reasons that it is bound only by this Court's precedent. But that is only part of the analysis. On habeas review, federal courts may only grant habeas relief where the State court's decision was contrary to or an unreasonable application of this Court's precedent.

This point is not a small one. Indeed, the practical effect of the Sixth Circuit's analysis is to eliminate any deference. Under a correct application of AEDPA, a reviewing court does not apply its own interpretation of this Court's precedent, but rather, attempts to assess whether the State court's interpretation is objectively unreasonable. In making that assessment, a court cannot easily ignore the fact that numerous other courts have reached similar conclusions.

C. The bright-line rule created by the Sixth Circuit is arbitrary and fails to serve the purpose for which *Miranda* was created.

The purpose of *Miranda* is to protect against the inherent coercive pressure created by custody. *See Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). Where the suspect is already incarcerated, however, much of the coercive aspects of custody such as armed officers, shackles, bars, and restriction on movement, have become daily routine. A prisoner is also aware that he is being held pursuant to a conviction, not an external police investigation. Thus, absent some other form of coercion, such as imposing greater restrictions, a prisoner understands that refusal to cooperate with an external investigation simply means remaining in routine custody until the end of his sentence. *See Shatzer*, 130 S. Ct. at 1224-25; *Ellison*, 2010 U.S. App. LEXIS 7814, at *6.

Rather than applying the traditional fact-specific *Miranda* analysis to determine whether

coercive restrictions have been imposed, the Sixth Circuit has created the following location-based parameters: *Miranda* warnings are required any time a prisoner is questioned (1) away from the general prison population (2) about criminal activity occurring outside of the prison. Neither of these bright lines offers any real connection to the inherent pressures of custodial interrogation.

First, this rule presupposes that questioning is inherently coercive any time that it occurs outside of the general prison population. While it may be true that daily prison routine establishes a baseline norm for inmates, there is no liberty interest in a particular routine or physical location. *See Sandin v. Conner*, 515 U.S. 472, 486 (1995). In fact, prisoners are routinely subject to involuntary movement as well as restrictions on movement. A prisoner may be removed from the general population for any number of reasons ranging from administration to discipline. There is no reason to equate any movement out of the general prison population with that of taking a citizen out of the general public. Nor is there any reason to presume a reasonable inmate would find such movement to be inherently coercive.

Furthermore, this bright-line rule presumes that virtually every possible environment where a prisoner could be taken is more coercive than the general prison population. This ignores the fundamental difference between a well-lit conference room and a windowless basement. The Sixth Circuit's rule prohibits reviewing courts from making any contextual analysis.

Similarly, the distinction between criminal activity inside and outside of the prison is arbitrary. A prisoner suspected of murder inside the prison has far more at stake than a prisoner suspected of committing fraud outside the prison. Yet, the Sixth Circuit's new rule applies only to the latter. The purported reason is to avoid impeding on-scene questioning. But again, the rule is far less equipped to deal with the practical realities of an investigation than the traditional fact-specific *Miranda* test.

And this rule affords greater protection to prisoners than ordinary citizens, thereby impeding investigations. A good example of this is *Fields*, 617 F.3d at 818-20 in which the defendant was serving a 45-day sentence for disorderly conduct when police learned of an alleged sexual assault. The options for police were to either question the defendant at the jail or wait until his sentence ended. Rather than waiting, the police visited the defendant at the Sheriff's Department to see if he would agree to a voluntary interview.

The defendant was escorted from his cell to a conference room in the same building. He was told that he was free to end the interview and return to his cell whenever he wished. In his efforts to shift blame, the defendant voluntarily spoke with police. Under the Sixth Circuit's new rule, however, *Miranda* warnings were automatically required. Yet had Fields not been incarcerated or had the police delayed their investigation until he was released before approaching him for a voluntary interview, the traditional *Miranda* analysis would apply.

Finally, this rule does very little to relieve courts from the traditional *Miranda* analysis. Now, where officers wish to explore whether a prisoner will voluntarily speak with them, the officers will visit the defendant in the prisoner's cell. This simply moves the *Miranda* analysis from the brightly lit conference room as in *Fields*, to armed officers in a prisoner's locked cell – a scenario rife with potential claims of coercion. Prisoners do not ordinarily have free reign to roam at will throughout areas of the general population, nor are cells in the general population always open and visible to other prisoners.

There is no basis to impose a bright-line rule requiring *Miranda* warnings based solely on the physical location of a voluntary interview and the location of the offense being investigated. More importantly, however, such a rule has not been clearly established by this Court's precedent.

CONCLUSION

WHEREFORE, the amici States ask this Court to grant Ohio's petition for certiorari and reverse the Sixth Circuit.

Respectfully submitted,

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