In The

Supreme Court of the United States

CAROL HOWES,
Petitioner,

v.

RANDALL FIELDS,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court's clearly established precedent under 28 U.S.C. § 2254 holds that a prisoner is always "in custody" for purposes of *Miranda* any time that prisoner is isolated from the general prison population and questioned about conduct occurring outside the prison regardless of the surrounding circumstances.

PARTIES TO THE PROCEEDING

The Petitioner is Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan. Petitioner was Respondent-Appellant in the United States Court of Appeals for the Sixth Circuit.

The Respondent is Randall Fields, a prisoner at the Lakeland Correctional Facility currently serving a sentence of 10-to-15 years' imprisonment as the result of his State convictions for third-degree criminal sexual conduct. Respondent was Petitioner-Appellee in the United States Court of Appeals for the Sixth Circuit.

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The United States Court of Appeals for the Sixth Circuit decision affirming federal habeas relief, *Fields v. Howes*, is reported at 617 F.3d 813 (6th Cir. 2010). Pet. App. 2a-30a. The United States District Court for the Eastern District of Michigan decision granting federal habeas relief is an unpublished opinion filed February 9, 2009. Pet. App. 32a-51a.

The Michigan Supreme Court decision denying application for leave to appeal, *People v. Fields*, is reported at 472 Mich. 938; 698 N.W.2d 394 (2005). Pet. App. 52a. The Michigan Court of Appeals decision affirming Fields's convictions of two counts of third-degree criminal sexual conduct is an unpublished decision filed May 6, 2004. Pet. App. 53a-62a.

JURISDICTION

The opinion of the Sixth Circuit affirming federal habeas relief was filed August 20, 2010. This Court has jurisdiction to review this petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment to the United States Constitution provides:

> No person shall be . . . compelled in any criminal case to be a witness against himself[.]

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, 104, 110 Stat. 1214, 1219, codified at 28 U.S.C. § 2254, provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-
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> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

INTRODUCTION

In this habeas case, the Sixth Circuit has created a new "bright-line" test for questioning prisoners under *Miranda*. Now, whenever a suspect who is incarcerated is questioned away from the general prison population about conduct that occurred outside the prison, the *Miranda* warnings must be given regardless of the surrounding circumstances or whether the coercive pressures that *Miranda* was crafted to protect against are present. Pet. App. 7a-13a.

Rather than acknowledging this as a new rule, the Sixth Circuit instead declares its approach was clearly established by this Court 42 years ago in *United States v. Mathis*.[1] Applying its new rule, the Sixth Circuit has now granted habeas relief to State prisoners in Michigan and Ohio because the State courts determined that the *Miranda* warnings were not necessary after considering the circumstances surrounding the questioning.

The State of Michigan asks this Court to grant certiorari and reverse for three reasons.

First, *Mathis* fails to establish such a bright-line rule. Shortly after *Miranda* was decided, the government argued that its holding should never apply to individuals serving a prison sentence for an unrelated offense because they are not being held in custody for the purposes of questioning. While *Mathis* held that *Miranda* applies to prisoners, it did not hold that *Miranda* warnings must always be given when a

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[1] *Mathis v. United States*, 391 U.S. 1 (1968).

prisoner is questioned away from the general prison population.

Second, the Sixth Circuit's decision conflicts with the decision of other Circuits on the same important matter. S. Ct. Rule 10(a). Indeed, no circuit has ever read *Mathis* as establishing such a bright-line rule. In fact, in direct conflict with this case, the Second Circuit has denied habeas relief on a similar set of facts because there is no clearly established precedent from this Court creating such a rule.

Third, habeas relief may not be granted under AEDPA unless the State court's decision was contrary to or an unreasonable application of this Court's clearly established precedent. Contrary to the express language of the statute and this Court's prior holdings, the Sixth Circuit has created a new rule and then granted habeas relief because the Michigan courts failed to apply that rule. A new rule cannot provide the basis for habeas relief.

Finally, the State of Michigan would note that the State of Ohio is similarly seeking certiorari in *Simpson v. Jackson*, 615 F.3d 421 (6th Cir. 2010), (No. 10-458), a habeas case in which the Sixth Circuit employs the same erroneous analysis of *Mathis* and erroneous application of the AEDPA standard.

STATEMENT OF THE CASE

Following a jury trial in the Lenawee County Circuit Court, Randall Fields was found guilty of two counts of third-degree criminal sexual conduct for sexual abuse of a thirteen-year-old child.[2]

A. The Facts Surrounding Fields's Confession

Lenawee County Michigan Sheriff's Deputy David Batterson received a complaint alleging that Fields had engaged in sexual conduct with a minor. At that time, Fields was serving an unrelated 45-day sentence for disorderly conduct. Therefore, Deputy Batterson went to the Sheriff's Department where Fields was being held to investigate the accusation.

Fields was escorted from his cell in the holding area to a conference room in the administrative area of the Sheriff's Department. Pet. App. 67a-69a (State hearing on admissibility of statement, June 21, 2002, pp. 6-7).[3] He was neither shackled nor handcuffed. Pet. App. 71a-72a (State hearing, p. 9). The door to the conference room was not locked and, in fact, was left open during part of the interview. Pet. App. 70a-71a (State hearing, p. 8).[4]

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[2] Mich. Comp. Laws § 750.520d.

[3] This was not an interrogation room, but a well-lit conference room containing a conference table, chair, desk, and wipe-board. Pet. App. 87a-88a (State hearing, p. 23).

[4] The majority opinion misconstrues Fields's testimony to mean that the door to the conference room was locked. Pet. App. 3a. Fields's actual testimony was that the door separating the jail from the administrative offices was locked, not the door to the conference room in which he was interviewed. Pet. App. 71a-72a (State hearing, p.9).

Upon his arrival, Fields was not given *Miranda* warnings, but was told that "I could leave whenever I wanted to." Pet. App. 70a-71a (State hearing, p. 8). Deputy Batterson informed Fields that he was investigating a criminal sexual conduct case involving the victim. Pet. App. 109a-110a (State trial, October 22, 2002, Vol. I of II, p. 94); Pet. App. 72a-73a (State hearing, p.10). Fields, who holds a bachelor's degree in psychology and a master's degree in counseling, indicated that the victim visited his house frequently and that he was like a father-figure to him. Pet. App. 110-112a (Vol. I, pp. 95-96); Pet. App. 80-82a (State hearing, pp. 17-18).

The first several hours of the interview involved a general discussion about Fields and the victim. Pet. App. 125a-126a (Vol. I, p. 107). Approximately halfway through the interview, Deputy Batterson confronted Fields with the allegations. Pet. App. 80a-81a (State hearing, p. 17). Fields denied the accusations and attempted to present a timeline of events to Deputy Batterson. Pet. App. 70a-71a, 106a (State hearing, pp. 8, 38).

According to Deputy Batterson, at one point Fields got out of his chair and began yelling at him. Deputy Batterson told Fields that he could return to his cell because he was not going to tolerate being talked to that way. Pet. App. 125a-126a (Vol. I, p. 107). Fields confirmed this incident, though he claimed Deputy Batterson told him to "sit my f---ing ass down" and that "if I didn't want to cooperate, I could leave." Pet. App. 71a, 88a-93a (State hearing, pp. 8, 24-27). Fields did not ask to return to his cell, but instead sat

back down and continued the interview. Pet. App. 125a-126a (Vol. I, p. 107); Pet. App. 92a-93a (State hearing, p. 27). Fields acknowledged that he believed a jailer would have taken him back to his cell if he had asked. Pet. App. 92a-93a (State hearing, pp. 27). After several hours, Fields admitted to engaging in oral sex with the victim and manually masturbating the victim. Pet. App. 112a-114a, 124a-126a (State hearing, pp. 97-98, 106-107).

Defense counsel filed a motion to suppress this confession, arguing that Fields was subjected to a custodial interrogation without being provided his *Miranda* warnings. At the evidentiary hearing in the State trial court, Fields claimed that he did not feel free to leave the interview despite being told that he could do so. Pet. App. 70a-72a (State hearing, pp. 8-9). He claimed that he felt intimidated by the fact the interviewing officers were armed, though he admitted that he was never threatened or assaulted in any way. Pet. App. 73a-74a, 97a-100a (State hearing, p. 11, 31-32). Ultimately, the trial court determined that Fields was not in custody for purposes of *Miranda* and therefore his statements were admissible.

B. Direct Review in the State Courts

Fields filed an appeal of right in the Michigan Court of Appeals claiming that his statements were inadmissible because he had not been given his *Miranda* warnings before questioning. Although Fields was incarcerated at the time of questioning, it was on an unrelated matter, no greater restraints were imposed in relation to the questioning, and he was repeatedly told that he was free to end the interview.

The State court reasoned that because Fields was free to return to the jail and was questioned on a matter unrelated to his incarceration, there was no obligation to provide him warnings under *Miranda*:

> Here, defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement. [Pet. App. 56a.]

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

C. Habeas Review in the Federal Courts

Fields filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 claiming that his Fifth Amendment right against self-incrimination was violated. The District Court granted habeas relief, concluding that the State courts had unreasonably applied this Court's holding in *Mathis v. United States*:

> Although some federal circuit courts have restricted *Mathis*, . . . this Court is bound by clearly established federal law as determined by the Supreme Court. . . . The Supreme Court determined in *Mathis* that the petitioner 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. The court of appeals' decision was contrary to and an unreasonable application of *Mathis*. [Pet. App. 43a.]

As the district court noted, and as discussed further below, other courts that have considered questioning of suspects incarcerated on an unrelated matter have declined to find a bright-line rule within *Mathis* and have applied a context-specific custody analysis as traditionally used in *Miranda* cases. Therefore, the State of Michigan appealed, arguing that it was not an objectively unreasonable application of clearly established federal law for the State courts to also interpret *Mathis* in this way.

The Sixth Circuit affirmed, but used a different rationale. First it misinterpreted *Mathis*, imputing a bright-line test that is far broader in scope than the language of *Mathis* permits. It then concluded that the Michigan court's adjudication was *contrary to Mathis*:

> 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.
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> * * *

> The critical issue in this inquiry becomes whether the prisoner is isolated from the general prison population for questioning.
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> * * *
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> *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. [Pet. App. 10a, 19a, 20a (emphasis added).]

Writing separately, Judge McKeague indicated his disagreement with the majority, but was bound by the Sixth Circuit's decision in *Simpson*, 615 F.3d at 421, issued only weeks before this opinion:

> In particular, in contrast to the majority and *Simpson*, I do not believe that *Mathis* obviates the need for the context-specific custody analysis clearly established by *Miranda* and its progeny. Moreover, I do not agree with the majority that *Mathis* established a bright line test to the effect 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." [Pet. App. 22a.]

The State of Michigan now petitions this Court for certiorari because the Sixth Circuit's opinion: (1) is

contrary to this Court's clearly established precedent; (2) creates a conflict with decisions of other circuits on the same important matter; and (3) fails to properly apply the AEDPA standard of review.

REASONS FOR GRANTING THE PETITION

I. This Court's clearly established precedent does not hold that *Miranda* warnings are automatically required any time a prisoner is questioned away from the general prison population.

In *Miranda v. Arizona*, this Court held that the Fifth Amendment privilege against self-incrimination also protects individuals from the "informal compulsion exerted by law-enforcement officers during in-custody questioning."[5] Accordingly, once in custody, a suspect must be advised of certain rights prior to questioning.[6] Unless these rights are knowingly, intelligently, and voluntarily waived, any incriminating responses to police-initiated questioning are inadmissible.[7]

The procedural safeguards outlined in *Miranda* are only required where the suspect is "in custody."[8] The test for determining whether a person is in custody for purposes of *Miranda* is context-specific: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt that he or she was not at liberty to terminate the interrogation and leave."[9] A reviewing court "must examine all of the circumstances surrounding the interrogation," and the initial custody

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[5] *Miranda v. Arizona*, 384 U.S. 436, 464 (1966).

[6] *Miranda*, 384 U.S. at 478.

[7] *Miranda*, 384 U.S. at 478.

[8] *See Rhode Island v. Innis*, 446 U.S. 291, 300 (1980); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977).

[9] *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

determination depends on the objective circumstances rather than the subjective beliefs of the suspect.[10]

In *Mathis v. United States*, this Court addressed whether *Miranda* warnings apply to a suspect who was incarcerated on an unrelated matter.[11] The defendant in *Mathis* was interviewed by an I.R.S. agent regarding information in his tax returns. He was not advised that his answers could form the basis of a criminal prosecution nor given the *Miranda* warnings. Based in part on his incriminating statements, the defendant was subsequently convicted of criminal tax violations. On appeal, the defendant argued that admission of his statements violated *Miranda*. This Court agreed and reversed, holding the defendant was entitled to *Miranda* warnings.

Critically, however, neither the government nor the defendant challenged whether the defendant was in custody within the meaning of *Miranda* during his interview with the I.R.S. agent. Rather, the government argued that *Miranda* should not apply at all to suspects incarcerated on an unrelated matter because they were not being held for the purpose of questioning. In rejecting this argument, this Court explained that prisoners were also given the protections of *Miranda*:

> The Government also seeks 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

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[10] *Stansbury v. California*, 511 U.S. 318, 322 (1994).

[11] *Mathis*, 391 U.S. at 1.

> case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights. 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.[12]

Thus, in a case where custody was conceded, the Court declined to curtail the application of *Miranda* to prisoners. Nothing in *Mathis*, however, provides any greater protection to prisoners nor sets forth any new test for determining custody.

Nevertheless, in the present case the Sixth Circuit erroneously concluded that *Mathis* forecloses the fact-specific custody analysis traditionally used in *Miranda* cases. The Sixth Circuit was simply wrong when it held: "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 . . . about conduct occurring outside of the prison." Pet. App. 10a. Using this mistaken analysis, the Sixth Circuit erroneously concluded that it was contrary to clearly established federal law, Pet. App. 10a-14a, 20a, even though the Michigan courts looked to the circumstances surrounding Fields's interview in determining that the

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[12] *Mathis*, 391 U.S. at 4-5.

Miranda warnings were not required – Fields was told he was free to leave at any time. Pet. App. 56a.

Mathis does not establish such a bright-line rule. Rather, as the concurring opinion in the Sixth Circuit correctly observes, *Mathis* simply involved the government's claim that *Miranda* should not apply to prisoners. Pet. App. 22a-23a. *Mathis* rejected that argument but this Court did not establish a bright-line rule that prisoners are always "in custody" for *Miranda* purposes and that *Miranda* warnings are mandated anytime a prisoner is questioned away from the general prison population. Indeed, there is nothing in *Mathis* to suggest the rather peculiar conclusion that prisoners would have greater protection under *Miranda* than the general public.[13]

In support of its broad interpretation of *Mathis*, the Sixth Circuit relied on this Court's recent decision *Maryland v. Shatzer*.[14] The issue in *Shatzer* was whether a lapse in custody of more than two years was sufficient to vitiate a suspect's invocation of his right to counsel during questioning.[15] While not a *Miranda* case, part of the analysis was whether the suspect was in custody. And in that regard, this Court noted that "no one questions that Shatzer was in custody for *Miranda* purposes[.]"[16]

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[13] Citizens are routinely questioned at a police station rather than on the street. Though no longer in the general population, there has never been a bright-line rule that such questioning always amounts to a custodial interrogation without any consideration of the surrounding circumstances.

[14] *Maryland v. Shatzer*, __ U.S. __; 130 S. Ct. 1213 (2010).

[15] *Shatzer*, 130 S. Ct. at 1217.

[16] *Shatzer*, 130 S. Ct. at 1224.

Relying on this lack of dispute over custody, the Sixth Circuit in this case erroneously concluded that the "unambiguous conclusion" in *Shatzer* is that a suspect is in custody for purposes of *Miranda* any time he is removed from his normal life in prison and taken to an isolated area or conference room. Pet. App. 10a, 18a ("a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated").

But as the Sixth Circuit concurring opinion correctly points out, just as in *Mathis*, the fact that custody was not at issue in *Shatzer* does not establish that there is clear precedent holding that *Miranda* warnings are required anytime a prisoner is questioned away from the general prison population. [17] Pet. App. 23a.

In fact, far from supporting the majority's view, *Shatzer* underscores its error. First, rather than recognizing a clearly established rule that a prisoner is entitled to *Miranda* warnings when questioned outside of the general prison population, this Court stated that "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have

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[17] Even assuming that *Shatzer* does establish such a bright-line rule, habeas relief would still be inappropriate because it was decided after this case became final and cannot be retroactively applied. *See Teague v. Lane*, 489 U.S. 288 (1988). *Mathis* was the existing precedent at the time of the decision and no court has culled this bright-line rule from its holding.

indeed explicitly declined to address the issue."[18] An open question cannot form the basis of clearly established federal law for purposes of AEDPA.[19]

Moreover, *Shatzer* goes on to explain that the issue of whether incarceration amounts to custody for purposes of *Miranda* "depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against."[20] Rather than recognizing any bright-line rule, the Court reiterated that *Miranda* is driven by its purpose requiring a fact-specific analysis:

> Our cases make clear, however, that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody. We have declined to accord it "talismanic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated."[21]

The purpose of *Miranda* is to protect against the inherent coercive pressure created by custody.[22] Where the suspect is already incarcerated, however, much of

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[18] *Shatzer*, 130 S. Ct. at 1224. *See also Illinois v. Perkins*, 496 U.S. 292, 299 (1990)("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").

[19] *See Wright v. VanPatten*, 552 U.S. 120, 125 (2008); *Carey v. Musladin*, 549 U.S. 70, 76 (2006).

[20] *Shatzer*, 130 S. Ct. at 1224.

[21] *Shatzer*, 130 S. Ct. at 1224.

[22] *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

the inherent pressure (armed officers, shackles, bars, and restriction on movement) is routine. A prisoner is also aware that he is being held pursuant to a conviction, not an external police investigation. Absent some other form of coercion such as imposing greater restrictions, a prisoner understands that refusing to cooperate with an external investigation simply means remaining in routine custody until the end of the prisoner's sentence. While easy to administer, a bright-line rule basing custody solely on where the prisoner is questioned without regard to any additional coercive pressure does not serve the purposes of *Miranda*.[23]

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.[24] 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."[25] 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

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[23] Unlike television portrayals, many prison cells are completely enclosed and do not have an open barred wall facing the general population. Questioning a prisoner in an open conference room is arguably less coercive than several officers questioning the prisoner in a small enclosed cell.

[24] *United States v. Ellison*, Case No. 09-1234, 2010 U.S. App. LEXIS 7814 (1st Cir. Apr. 15, 2010).

[25] *Ellison*, at *6.

> 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.[26]

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 custody under *Miranda* in the prison setting.

II. The Sixth Circuit's interpretation of *Mathis* creates a split among the circuits.

Mathis was decided 42 years ago. Since then, no other circuit has interpreted its holding to create the bright-line rule now adopted by the Sixth Circuit. In fact, in a materially indistinguishable case, the Second Circuit in *Georgison v. Donelli* held exactly the opposite,[27] denying habeas relief because there is no clearly established Supreme Court precedent creating a per se rule.

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[26] *Ellison*, at *7.

[27] *Georgison v. Donelli*, 588 F.3d 145 (2d Cir. 2009).

A. The Sixth Circuit's decision directly conflicts with a decision from the Second Circuit in *Georgison*.

As in this case, the defendant in *Georgison v. Donelli* was incarcerated for an unrelated offense when he was taken to a visitor's room for an interview with the police.[28] He was not given his *Miranda* warnings, but was asked if he was willing to speak with the officers. During that interview, he was confronted with an accusation regarding an assault and he made several incriminating statements.

The defendant claimed that his statements should have been excluded because he was not given the *Miranda* warnings prior to questioning. On direct review, the State courts denied this claim reasoning that he was not in custody for purposes of *Miranda* because no greater restrictions were placed on his freedom over and above ordinary prison confinement.[29]

On habeas review, the defendant claimed that the State courts' decision was contrary to *Mathis* – the same basis upon which habeas relief was granted in this case. Unlike this case, however, the Second Circuit denied habeas relief under AEDPA, finding no bright-line rule in this Court's precedent. "Because the per se rule urged by Georgison is not clearly established

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[28] *Georgison*, 588 F.3d at 150.

[29] *Georgison*, 588 F.3d at 152.

federal law, the state courts here did not unreasonably decline to apply it."[30]

As discussed above, the purpose of *Miranda* is to guard against the inherent coercive force of custody, not to impose pro forma procedures where no such pressure exists. Rather than reading a bright-line rule into *Mathis*, the Second Circuit concluded that "the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here."[31] In reaching this conclusion, the court engaged in the fact-specific custody analysis traditionally used in *Miranda* cases:

> There was no "measure of compulsion above and beyond that inherent in custody itself," *Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980), and Georgison was not "subjected to restraints comparable to those associated with a formal arrest," [*Berkemer v. McCarty*, 468 U.S. 420, 441 (1984).] There was no coercive pressure that tended to undermine Georgison's will or to compel him to speak. This is supported by the fact that Georgison felt free to refuse to answer questions and to end the interview of his own volition. It is also apparent that Georgison left the

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[30] *Georgison*, 588 F.3d at 156, citing *Musladin*, 549 U.S. at 77. The Second Circuit even noted that since 1987, "the Supreme Court has cast serious doubt on the existence of a per se or bright-line rule that would require *Miranda* warnings in the prison setting. *Georgison*, 588 F.3d at 156.

[31] *Georgison*, 588 F.3d at 157.

> visiting room at a time and in a manner of his choosing, demonstrating that he knew he was "at liberty to terminate the interrogation and leave." See [*Thompson v. Keohane*, 516 U.S. 99, 112 (1995).] At no time was Georgison restrained during questioning, which took place in a visitors' room and not in a cell or interrogation room which might be capable of a more profound custodial atmosphere.[32]

Thus, in direct conflict with the present case, *Georgison* concludes that *Mathis* does not clearly establish a bright-line rule for determining custody, and instead applies the fact-specific custody analysis traditionally used in *Miranda* cases.

B. No other Circuit has interpreted *Mathis* to establish the bright-line rule adopted by the Sixth Circuit.

Moreover, a review of the other circuits that have examined *Miranda* as it applies to incarcerated prisoners demonstrates that the Sixth Circuit's decision conflicts with the decisions of the other circuits.

In *Cervantes v. Walker*, a habeas case from the Ninth Circuit, officers found marijuana during a routine search of a prisoner's belongings.[33] A sheriff's deputy took the box of marijuana to the prisoner

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[32] *Georgison*, 588 F.3d at 157.

[33] *Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978).

sitting in the prison library and asked, "What's this?" to which the prisoner replied, "That's grass, man."[34] He was subsequently convicted of possessing marijuana.

The prisoner sought habeas relief, arguing that his status as an inmate combined with the deputy's questions amounted to custodial interrogation entitling him to the *Miranda* warnings. The Ninth Circuit disagreed, holding that under the circumstances, *Miranda* warnings were not required. First, the court rejected the argument that *Mathis* creates a per se rule requiring *Miranda* warnings. 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."[35]

Having rejected a per se rule, the Ninth Circuit turned to what the appropriate inquiry should be. After all, the traditional test of whether a person would feel free to leave does not fit with a prison setting where prisoners would arguably never feel free to leave. Beginning with the concept of restriction on movement, the court reasoned that the level of increased restrictions placed on a prisoner provides an appropriate framework for determining *Miranda* custody in a prison setting:

> The concept of "restriction" is significant in the prison setting, for it implies the need for a showing that the officers have

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[34] *Cervantes*. 589 F.2d at 427.

[35] *Cervantes*, 589 F.2d at 427.

> in some way acted upon the defendant so as to have "deprived [him] of his freedom of action in any significant way." . . . In the prison situation, this necessarily implies a change in the surroundings of the prisoner which results in an added imposition on his freedom of movement. Thus, restriction is a relative concept, one not determined exclusively by lack of freedom to leave. Rather, we look to some act which places further limitations on the prisoner.[36]

Thus, the Ninth Circuit reconciled *Miranda* and *Mathis* by framing the analysis as the extent to which a reasonable prisoner would believe his freedom of movement had been further diminished.[37] In this regard, the court identified four factors to consider: (1) the language used to summon the prisoner; (2) physical surroundings of the interrogation; (3) the extent to which officials confront the individual with evidence of guilt; and (4) whether officials exerted any additional pressure to detain the individual.[38] Applying these factors to Cervantes's case, the court determined that *Miranda* warnings were not required.[39]

Similarly, in *United States v. Conley*, a Fourth Circuit case, an incarcerated defendant was questioned

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[36] *Cervantes*, 589 F.2d at 428 (citation omitted).

[37] *Cervantes*, 589 F.2d at 429. *See also United States v. Turner*, 28 F.3d 981, 983 (9th Cir. 1994)("to determine whether *Miranda* warnings were necessary in a prison setting, 'we look to some act which places further limitations on the prisoner'").

[38] *Cervantes*, 589 F.2d at 428.

[39] *Cervantes*, 589 F.2d at 429.

about the death of another prisoner while awaiting medical treatment.[40] He was subsequently convicted of murder and claimed that his statements were inadmissible because he had not been given *Miranda* warnings prior to questioning. In rejecting this claim, the Fourth Circuit stated that an inmate is not entitled to *Miranda* warnings "merely by virtue of his prisoner status" and interpreted the clear holding of *Mathis* to apply the *Miranda* analysis to prisoners rather than to create any bright-line rule regarding custody.[41] As in *Cervantes*, the court reasoned that the freedom-of-movement test does not serve the purposes of *Miranda* in the prison setting:

> A rational inmate will always accurately perceive that his ultimate freedom of movement is absolutely restrained and that he is never at liberty to leave an interview conducted by prison or other government officials. Evaluation of prisoner interrogations in traditional freedom-to-depart terms would be tantamount to a *per se* finding of "custody," a result we refuse to read into the *Mathis* decision.[42]

Finding the analysis in *Cervantes* persuasive, the Fourth Circuit engaged in an analysis of the circumstances surrounding the questioning and ultimately concluded the defendant was not subject to

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[40] *United States v. Conley*, 779 F.2d 970 (4th Cir. 1985).

[41] *Conley*, 779 F.2d at 972.

[42] *Conley*, 779 at 973.

greater restriction amounting to "custody" for purposes of *Miranda*.[43]

This reasoning in *Cervantes* and *Conley* has been the general understanding of *Mathis* among the circuits.

For example, in *United States v. Menzer*, a Seventh Circuit case, the defendant claimed that his statements to officers during an interview in the administrative area of the prison were inadmissible under *Mathis* as he had not been given the *Miranda* warnings.[44] Rather than finding a bright-line rule in *Mathis*, the Seventh Circuit concluded the defendant was not in custody under the totality of the circumstances because there was no added imposition on his freedom of movement nor any measure of compulsion above and beyond imprisonment.[45]

Likewise, in *United States v. Scalf*, the Tenth Circuit concluded that the district court did not err in applying the test in *Cervantes* in examining whether *Miranda* was required to a prisoner who was questioned while incarcerated.[46] And in *Garcia v. Singletary*, the Eleventh Circuit concluded that "[a]fter reviewing the relevant law, we find the reasoning employed in *Cervantes* and *Conley* highly persuasive."[47]

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[43] *Conley*, 779 F.2d 974.

[44] *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994).

[45] *Menzer*, 29 F.3d at 1232.

[46] *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984).

[47] *Garcia v. Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994).

No circuit other than the Sixth Circuit has interpreted *Mathis* to establish a bright-line rule requiring the provision of the *Miranda* warnings before interrogating an incarcerated person.[48] In fact, prior to *Simpson* and this decision, the Sixth Circuit in *United States v. Ozuna* acknowledged that "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.'"[49] In *Ozuna*, the defendant was returned to U.S. customs after being denied entry into Canada. He was questioned for over an hour about his citizenship and itinerary during which he made several incriminating statements. The Sixth Circuit concluded that *Miranda* warnings were not required, however, because the defendant was not in custody for purposes of *Miranda*. Like prisoners, the court reasoned, there is an expected restraint on freedom associated with travel to another country that does not in itself automatically amount to custody.[50]

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[48] *See United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988) although the defendant was a prisoner and not free to leave the facility, "there was nothing in the circumstances that suggested any measure of compulsion above and beyond that confinement"); *Alston v. Redman*, 34 F.3d 1237, 1245 (3d Cir. 1994)("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)("[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").

[49] *United States v. Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999), citing *Cervantes*, 589 F.2d at 428.

[50] *Ozuna*, 170 F.3d at 658-659.

Here, the majority opinion dismisses all of these cases as factually distinct. Pet. App. 11a-12a6. But this truly misses the point. While these cases are not binding on the State courts, they are highly relevant to a determination of what constitutes clearly established federal law. Where no other circuit has interpreted *Mathis* to establish the bright-line rule now created by the Sixth Circuit, it simply cannot be the case that the State courts were "objectively unreasonable" for failing to do so.

III. Rather than applying the clearly established precedent of this Court as required by the AEDPA, the Sixth Circuit has created a new constitutional rule on collateral review.

Only "clearly established Federal law, as determined by the Supreme Court of the United States" may form the basis for a grant of habeas relief to a State prisoner under 28 U.S.C. § 2254(d)(1).[51] A federal habeas court "operates within the bounds of comity and finality if it applies a rule 'dictated by precedent existing at the time the defendant's conviction became final.'"[52] 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."[53] And such is the case here.

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[51] *Williams v. Taylor*, 529 U.S. 362, 379 (2000).

[52] *Williams*, 529 U.S. at 381, quoting *Teague*, 489 U.S. at 301.

[53] *Williams*, 529 U.S. at 381. *See also Knowles v. Mirzayance*, 129 S. Ct. 1411, 1419 (U.S. 2009)("it is not 'an unreasonable application of clearly established Federal law' for a state court to decline to apply a specific legal rule that has not been squarely established by this Court"); *Wright*, 552 U.S. at 125; *Musladin*, 549 U.S. at 76-77.

Contrary to the Sixth Circuit decision, neither *Mathis* nor *Shatzer* stand for the proposition 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." Pet. App. 10a. No case from this Court has ever established such a rule. Nor does the majority opinion identify any other circuit that has interpreted *Mathis* or *Shatzer* in this way. The only case with such a holding is *Simpson*, 615 F.3d at 421, a decision released by the Sixth Circuit a few weeks before the present one.[54]

On the other hand, the numerous cases cited by the State demonstrate that other circuits have not read *Mathis* to eliminate the context-specific custody analysis traditionally used in *Miranda* cases. While these cases are not binding on the State courts, they demonstrate that it was not an objectively unreasonable application of clearly established federal law for the State courts to consider the totality of the circumstances surrounding Fields's confession.[55]

Rather than addressing the difficult question of how it could be objectively unreasonable for the State courts to apply the same reasoning as so many other

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[54] The State of Ohio has filed a petition for certiorari in *Simpson*. Case No. 10-458.

[55] While the majority is correct that clearly established Federal law is limited to the holdings of this Court, Pet. App. 7a, the reasoning employed by courts of appeal are persuasive on the issue of whether a State court's decision was contrary to or an unreasonable application of this Court's precedent. *See Price v. Vincent*, 538 U.S. 634, 643 n2 (2003).

courts, the majority simply declares the State court adjudication "contrary to" its interpretation of *Mathis*. Pet. App. 7a.

A State court's adjudication is contrary to clearly established federal law if it arrives at a conclusion opposite to that of the Supreme Court on a question of law or decides a case differently on a set of materially indistinguishable facts.[56] Here, the majority found "the material facts in this case are indistinguishable from *Mathis*." Pet. App. 11a. Because custody was not at issue in *Mathis*, however, only a general recitation of events was provided. To read the general background of any case as setting forth a binding factual paradigm under which other cases are automatically decided would, as in this case, erroneously lead to the creation of numerous unintended bright-line rules.

Moreover, the facts in this case are quite distinct from *Mathis*. The interviewed prisoner in this case was not only highly-educated and familiar with the criminal justice system, he was aware that a criminal matter was being investigated and was repeatedly told that he could leave the interview whenever he wished. Further, unlike *Mathis*, Fields began yelling at the Deputy during the interview and was warned that if he did not calm down he would be returned to his cell. Instead of returning to his cell, Fields sat back down and voluntarily continued the interview – and that was before his confession. Pet. App. 125a-126a (Vol. I, p. 107); Pet. App. 70a, 88a-93a (State hearing, pp. 8, 24-27).

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[56] *Williams*, 529 U.S. at 413.

This is not a case in which the State courts ruled differently than this Court on a set of materially indistinguishable facts. Rather, it is a case in which the Sixth Circuit has improperly used habeas review as a vehicle for creating a new rule. Indeed, the majority even sets forth policy prospectively supporting the adopting such a rule:

> 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. [Pet. App. 20a (emphasis added).]

Mathis was decided in 1968. If, as the Sixth Circuit suggests, this bright-line approach has been clearly established federal law for the last 42 years, there would be no need to extol the virtues of what this approach "will" be.[57]

A bright-line rule such as that created by the Sixth Circuit is not the clearly established precedent of

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[57] The issue in this case is what clearly established Federal law is, not what it should be. Nonetheless, the rule suggested by the Sixth Circuit does not serve the purposes of *Miranda* particularly well. The "bright line" established by the majority is one of physical location, as if coercive pressure cannot be exerted within a prisoner's cell but is always present outside the general prison population. Courts are not relieved of context-specific inquiries into questioning within a cell, and are presented with a fertile ground for new litigation: what constitutes the general population.

this Court and, therefore, cannot serve as the basis for granting federal habeas relief under AEDPA. It was neither contrary to nor an unreasonable application of this Court's clearly established precedent to engage in the traditional *Miranda* analysis rather than applying the bright-line rule adopted by the Sixth Circuit. Accordingly, the State of Michigan requests that this Court grant certiorari and reverse.

CONCLUSION

WHEREFORE, the State of Michigan requests that this Court grant certiorari, reverse the Sixth Circuit, and hold that Respondent Fields was not subject to custodial interrogation, that *Miranda* warnings were not required, and therefore his statements were properly admitted.

Alternatively, the State of Michigan requests this petition be held pending the resolution of the State of Ohio's petition in *Simpson v. Jackson*, 615 F.3d 421 (2010); Case No. 10-458.

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PETITION APPENDIX INDEX