No. 10-680

In the Supreme Court of the United States

CAROL HOWES, PETITIONER

v.

RANDALL FIELDS

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

BRIEF FOR THE PETITIONER

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QUESTIONS 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

There are no parties to the proceeding other than those listed in the caption. The Petitioner is Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan. The Respondent is Randall Fields, a prisoner at the Lakeland Correctional Facility currently serving a sentence of imprisonment for 10-to-15 years as the result of his state convictions for third-degree criminal sexual conduct.

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The opinion of the Sixth Circuit in *Fields* v. *Howes* is reported at 617 F.3d 813. Pet. App. 2a–30a. The opinion of the United States District Court granting federal habeas relief is an unpublished opinion filed February 9, 2009. Pet. App. 32a–51a.

The Michigan Supreme Court decision denying leave to appeal in *People* v. *Fields* is reported at 472 Mich. 938; 698 N.W.2d 394. Pet. App. 52a. The Michigan Court of Appeals' opinion affirming Fields' conviction of two counts of third-degree criminal sexual conduct is an unpublished decision filed May 6, 2004.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 –
>
> > (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 proceeding.

INTRODUCTION

For nearly 50 years, this Court has eschewed any bright-line approach for determining whether a suspect is "in custody" for purposes of a *Miranda* warning, *Miranda* v. *Arizona*, 384 U.S. 436 (1966), instead applying a context-specific analysis. The question presented here is whether this Court in *Mathis* v. *United States*, 391 U.S. 1 (1968), impliedly jettisoned that context-specific test for incarcerated individuals, such that prison officials must always give *Miranda* warnings, regardless of the circumstances, before questioning prisoners about potentially incriminating conduct. It would be no small matter for this Court to change Fifth Amendment law to require a *per se* rule for *Miranda* warnings involving prisoners, and the State of Michigan respectfully submits that the *Mathis* opinion did no such thing.

In *Mathis*, neither the government nor the defendant challenged whether the defendant was "in custody" for purposes of *Miranda*. The issue was whether *Miranda* applied in the prison context at all. Thus, while this Court ultimately concluded that *Miranda* applied to prisoners, the *Mathis* opinion did not adopt a new, bright-line test that required a *Miranda* warning every time a prisoner is isolated from the rest of the prison population for questioning.

This Court revisited the relationship between custody and incarceration in *Maryland* v. *Shatzer*, 130 S. Ct. 1213 (2010), a case decided after the relevant state-court decisions here. As was the case in *Mathis*, "no one question[ed] that Shatzer was in custody for *Miranda* purposes," *Shatzer*, 130 S. Ct. at 1224, so there was no reason to address whether a prisoner's

isolation for questioning, without more, constituted a custodial interrogation. To the contrary, this Court in *Shatzer* affirmatively disclaimed the existence of any such rule: "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue." *Ibid*.

Due to the narrow holdings in *Mathis* and *Shatzer*, no federal circuit (aside from the Sixth) has ever concluded that this Court established a bright-line *Miranda* rule for prisoner interviews. And that fact is dispositive on the merits, because 28 U.S.C. § 2254(d) bars any habeas remedy unless Fields can show that his right to relief was "clearly established" by this Court's precedent at the time of his conviction. Having failed to make that threshold showing, it was error for the Sixth Circuit to grant Fields' habeas petition.

Wholly aside from the narrow standard of review applicable to a habeas challenge, there are sound reasons for declining to adopt the bright-line test that Fields propounds. Our law should encourage criminals to confess to the crimes they commit, provided that the circumstances surrounding the confession are not coercive. A bright-line *Miranda* rule ignores whether a prisoner's confession was actually voluntary, impedes prison interviews, and gives convicted criminals greater rights than those of ordinary citizens. Thus, this Court should continue to endorse *Miranda*'s context-specific test for prison interviews, and should reject the Sixth Circuit's new, bright-line approach.

Even if the Court were hearing this case on direct (rather than habeas) review, a context-specific inquiry would not require suppression of Fields' confession that

he sexually abused a 13-year boy. That is because the circumstances surrounding Fields' confession do not show police coercion. The state trial and appellate courts both reached that conclusion based on the totality of the evidence, with particular reliance on Fields' own testimony that he "could get up and leave [the interview] whenever [he] wanted to." Pet. App. 70a; accord Pet. App. 89a, 90a, 92a. Such freedom belies any sense of coercion, the risk that the courts fashioned *Miranda* to alleviate.

For all of the foregoing reasons, the State of Michigan respectfully requests that this Court defer to the state-court findings, reverse the court of appeals, and reinstate Fields' conviction for child sexual abuse.

STATEMENT OF THE CASE

1. Fields' sexual assault

Randall Fields is a health professional with an Associate's Degree in nursing, a Bachelor's Degree in Psychology, a Master's Degree in Counseling, and a conviction for pedophilia. Pet. App. 53a, 81a. He lived across the street from his victim who was 12-years old at that time. Pet. App. 53a. The two were introduced by Fields' nephew, who rode the victim's school bus. *Ibid*.

After the victim and Fields started "hanging out" at Fields' home, another adult, James Philo, moved in with Fields. Pet. App. 53a–54a. Fields described himself as a "fatherly figure" to the victim, Pet. App. 111a, and the two of them would sometimes watch pornographic films together with Philo, Pet. App. 54a.

One day, after consuming alcohol and smoking marijuana, Fields and Philo went into the bedroom where Fields performed oral sex on the victim. Pet. App. 54a. Philo also placed his mouth on the victim's penis. *Ibid*. At trial, the victim testified that Fields performed oral sex on him on two separate occasions. *Ibid*.

2. Fields' confession

On December 23, 2001, Fields was incarcerated in the Lenawee County Jail after pleading guilty to and being sentenced for disorderly conduct arising from a domestic-abuse charge. Pet. App. 54a, 67a, 84a. Sometime between 7:00 and 9:00 p.m., two jailers removed Fields from his cell, took him through the "J door" that connected the jail and the County Sheriff's Department, and walked him to a conference room. Pet. App. 54a, 68a–69a, 77a–78a, 87a–88a. Although Fields did not initially realize where he was going, he did not inquire, because he felt he was "in a safe environment." Pet. App. 87a–88a.

The conference room was a well-lit and sizable space with a desk, white board, and chairs. Pet. App. 88a. No one physically touched Fields or harmed him in any way. Pet. App. 88a. Fields "was not uncomfortable in this room," physically, Pet. App. 90a, nor was he shackled or handcuffed, Pet. App. 71a. After arriving at the conference room, a sheriff's deputy explained that Fields was being interviewed about whether he had any sexual involvement with the victim. Pet. App. 70a, 80a, 111a. As Fields himself admitted, after Fields arrived at the conference room, the sheriff's deputy told him that he "could get up and leave whenever [he] wanted to." Pet. App. 70a.

The first several hours of the interview involved a general discussion about Fields and the victim. Pet. App. 125a–126a. Approximately halfway through the interview, a deputy confronted Fields with the allegations. Pet. App. 80a. Fields denied the accusations and attempted to present a timeline of events to the deputy. Pet. App. 70a–71a, 106a.

According to Deputy David Batterson, Fields got out of his chair and began yelling. Batterson told Fields that he could return to his cell, because Batterson was not going to tolerate being talked to that way. Pet. App. 125a–126a. Accord Pet. App. 71a, 88a–93a (Fields claimed Batterson told him to "sit my f---ing ass down" and that "if I didn't want to cooperate, I could leave."). Fields did not ask to return to his cell, but instead sat back down and continued the interview. Pet. App. 125a–126a.

During Fields' interview, the officers offered him food or water, Pet. App. 124a, and provided Fields with water when he requested it, Pet. App. 97a, though Fields missed taking his medication because of the late hour, Pet. App. 79a. The officers did not threaten Fields, Pet. App. 98a; did not threaten to harm his family, *ibid*; and did not strike Fields or lay hands on him, *ibid*.

At his post-conviction evidentiary hearing, Fields said he was "intimidated" and "quite sure" that the officers present would not have allowed him to leave the conference room. Pet. App. 72a, 74a; accord Pet. App. 71a. But in response to questioning from his own attorney, Fields admitted that the deputy conducting the interview made clear that Fields "could get up and leave whenever [he] wanted to." Pet. App. 70a; accord

Pet. App. 75a. In fact, Fields reiterated several times his understanding that he was free to leave the interview whenever he wanted:

- "I was told, if I didn't want to cooperate, I could leave." Pet. App. 89a.
- "I was told I could get up and leave whenever I wanted." Pet. App. 90a.
- Q: "[Y]ou understood that, if you asked, one of them or a jailer would take you back to your cell?" A: "I assumed that." Pet. App. 92a.

Although Fields claimed that he told the officers "a couple of times" that he did not want to talk anymore, he admitted that he did not ask to go back to his cell "until the end" of the interview. Pet. App. 92a–93a.

Fields ultimately acknowledged that he had oral sex with and also masturbated the victim. Pet. App. 55a, 115a–116a. Fields also provided a statement specifying that Fields also engaged in oral sex with Philo and the victim in a motel, and that Fields masturbated the victim on two other occasions. Pet. App. 54a. The victim corroborated Fields' confession. Pet. App. 118a–119a.

During state-court proceedings, defense counsel moved to suppress Fields' confession, arguing that Fields was subjected to a custodial interrogation without being provided his *Miranda* warnings. Following an evidentiary hearing, the state trial court held the confession admissible after determining that given all the circumstances, there was no violation of *Miranda*: "In this particular case [Fields] was free to

leave, he was told that he was free to leave, and granted it might have taken a couple of minutes for that to be done. He knew that he could do this. . . . The motion [to suppress] is denied." Resp. App. 8a. A jury found Fields guilty of two counts of third-degree criminal sexual conduct for sexual abuse of a child. Mich. Comp. Laws § 750.520d.

3. State-court review of Fields' conviction

Fields appealed, arguing that his confession was inadmissible because he had not been given his *Miranda* warnings before questioning. The Michigan Court of Appeals rejected Fields' position because, under all the circumstances, *Miranda* warnings were not required:

> [D]efendant 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' application for leave to appeal. Pet. App. 52a.

4. Habeas review

Fields filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The district court granted habeas relief, concluding that the state courts had unreasonably applied this Court's holding in *Mathis*. Pet. App. 32a. The Sixth Circuit affirmed, interpreting *Mathis* as creating a bright-line test that requires prison officials to always give a *Miranda* warning, regardless of the circumstances, before asking any questions of an incarcerated individual who has been isolated from the general prison population:

> 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.
>
> * * *
>
> *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, 20a (emphasis added).

Writing separately, Judge McKeague disagreed with the majority, but noted that he was bound by the Sixth Circuit's decision one month earlier in *Simpson* v. *Jackson*, 615 F.3d 421 (6th Cir. 2010), where the Sixth Circuit applied the same bright-line test to an

Ohio inmate. Judge McKeague read *Mathis* as maintaining the context-specific inquiry that this Court has always applied when analyzing a custodial interrogation:

> *Mathis* holds that *Miranda* applies to a person interrogated while in prison on charges unrelated to the investigation for which he is interrogated, but it does not establish that such a person is automatically in custody or entitled to *Miranda* warnings anytime he is interrogated away from the general prison population. Instead, this determination depends on the context-specific analysis of whether the inmate is deemed to be "in custody"; *i.e.*, whether he was subject to the sort of isolation and coercive influence that trigger the need for *Miranda* warnings.

Pet. App. 23a (McKeague, J., concurring).

Judge McKeague did not see a bright-line rule in *Shatzer* either:

> [T]he fact that no one questioned whether Shatzer was in custody[] does not mean (or clearly establish) that anytime an inmate is removed from the general prison population and interrogated he is "in custody" for *Miranda* purposes. Instead, it only means that the parties, unlike the government in this case, did not make an issue of the "in custody" requirement in relation to those specific interrogations.

Pet. App. 24a (McKeague, J., concurring).

Applying the AEDPA standard, Judge McKeague would have denied habeas relief, because he could not "say that the Michigan Court of Appeals' decision applying the context-specific *Miranda* custody analysis is objectively unreasonable." Pet. App. 28a (McKeague, J., concurring). In this regard, Judge McKeague emphasized the critical fact that "Fields was told he could leave at any time." Pet. App. 30a. (McKeague, J. concurring).

The State of Michigan timely filed its petition for certiorari on November 18, 2010. The Court granted the petition on January 24, 2011.

SUMMARY OF ARGUMENT

The Sixth Circuit has created a bright-line rule that prisoners isolated from the general prison population must always receive a *Miranda* warning before interrogation commences when asked about conduct that occurred outside the facility. But such a rule is not rooted in this Court's caselaw. *Shatzer*, 130 S. Ct. at 1224 ("We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue."). To the contrary, the state courts' application of a context-specific analysis to determine whether Fields was entitled to a *Miranda* warning was consistent with this Court's precedent and a whole host of federal circuit decisions. Because a federal court may grant habeas relief to a state prisoner only if the earlier state court decision was contrary to or an unreasonable application of this Court's precedent, 28 U.S.C. § 2254(d)(1), the Sixth Circuit's grant of habeas relief should be reversed.

This Court should also repudiate the Sixth Circuit's bright-line rule for prison interviews. A context-specific approach appropriately considers all the facts and circumstances to determine whether a prisoner's confession was voluntary. In contrast, the Sixth Circuit's bright-line rule dispenses with any consideration of voluntariness, hampers prison administration, and provides prisoners with greater *Miranda* rights than those of other citizens. The Court should reject such a rule, which will serve no constitutional purpose and will deter prison confessions.

ARGUMENT

I. The decision of the state courts here was neither contrary to, nor an unreasonable application of, clearly established Supreme Court precedent.

A federal court may grant habeas relief to a state prisoner if the earlier state court decision was contrary to or an unreasonable application of clearly established federal law at the time of the decision. 28 U.S.C. § 2254(d)(1); *Harrington* v. *Richter*, 131 S. Ct. 770, 786 (2011); *Williams* v. *Taylor*, 529 U.S. 362, 403–04, 412 (2000). "[I]t 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." *Harrington*, 131 S. Ct. at 786, quoting *Knowles* v. *Mirzayance*, 129 S. Ct. 1411, 1419 (2009). A rule that "breaks new ground" or "imposes a new obligation on the States or the Federal Government" is not a proper basis for federal habeas relief to a state prisoner. *Williams*, 529 U.S. at 381 (Stevens, J., concurring opinion).

Contrary to the rule established by the Sixth Circuit majority opinion here, this Court has never squarely held 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. 19a. Further, no other circuit has interpreted any case from this Court as establishing such a rule. The Sixth Circuit's approach arises directly from that court's erroneous interpretation of the *Mathis* and *Shatzer* opinions.

A. *Mathis* did not hold that *Miranda* warnings are automatically required whenever an incarcerated individual is questioned outside the general prison population.

The issue addressed in *Mathis* v. *United States* was whether *Miranda* applies at all to a suspect being held on an offense unrelated to the questioning. 391 U.S. 1 (1968). While incarcerated, the defendant in *Mathis* was interviewed by an I.R.S. agent regarding information reported in his tax returns. He was not advised that his answers could form the basis of a criminal prosecution, nor was he given the *Miranda* warnings. Based in part on his statements, the defendant was subsequently convicted of criminal tax violations. This Court held that the defendant was entitled to *Miranda* warnings.

Critically, however, whether the defendant was in custody during his I.R.S. interview was not disputed. The issue was whether *Miranda* should apply to a suspect already in custody on an unrelated matter because he is not being held for the purpose of questioning—the government had conceded the point that the defendant was in custody. After setting forth

the government's argument that Mathis was not being held for the purpose of questioning or questioned as part of a criminal investigation, the Court stated: "These differences are too minor and shadowy to justify a departure from the well-considered conclusion of *Miranda* with reference to warnings to be given to a person *held in custody*." *Mathis*, 391 U.S. at 4 (emphasis added). In other words, this Court did not adopt a bright-line rule that *Miranda* never applies to prison interrogations, in the context of a government concession as to custody.

But recognizing *Miranda*'s relevance to prison interrogations does not have the effect of creating clearly established precedent that *Miranda* warnings must always be given before conducting prison interrogations. This Court in *Mathis* was silent on the latter issue, and such silence is not precedential. See *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 272 (1970); *Hagans* v. *Lavine*, 415 U.S. 528, 533 n.5 (1974) ("when questions . . . have been passed on in prior decision sub silentio, this Court has never considered itself bound when a subsequent case finally brings the . . . issue before us); *Plaut* v. *Spendthrift Farm Inc.*, 514 U.S. 211, 232 n. 6 (1995) ("unexplained silence . . . lacks precedential weight"). Yet it is in this very silence upon which the Sixth Circuit discovers a 42-year-old bright-line rule for *Miranda* cases.

Nothing in *Mathis* suggests any greater protection to prisoners than other citizens, nor does *Mathis* set forth any bright line regarding custody inside a prison or police station. Nonetheless, the Sixth Circuit majority *interpreted Mathis* broadly as requiring a *Miranda* warning "whenever an incarcerated

individual is isolated from the general prison population and interrogated . . . about conduct occurring outside of the prison." Pet. App. 10a. In other words, the majority concluded that it was contrary to clearly established federal law for the state courts to even consider the circumstances surrounding Fields' interview. Pet. App. 10a–13a.

Mathis does not establish such a bright-line rule. To the contrary, as the concurring opinion correctly observed below, *Mathis*'s rejection of the idea that prisoners have no *Miranda* rights whatsoever hardly establishes a bright-line rule that prisoners are *always* entitled to *Miranda* warnings, regardless of the surrounding circumstances. Pet. App. 22a–23a. Such a ruling would be peculiar, affording prisoners greater protection under *Miranda* than the general public.[1]

Further, while the majority below found "the material facts in this case indistinguishable from *Mathis*," Pet. App. 11a, because custody was not at issue in *Mathis*, there was no need for a fact-specific analysis—and none was given. To read the government's concession of custody as the creation of a clear rule by this Court would be inappropriate in a direct review case, let alone one requiring the deferential treatment to be given the state courts on collateral habeas review.

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[1] Citizens are routinely questioned at police stations, rather than on the street or otherwise in the general population. Yet, there has never been a bright-line rule that such questioning always amounts to a custodial interrogation, without any consideration of the surrounding circumstances. Cf. *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977).

In any event, the facts in this case are quite distinct from *Mathis*. Randall Fields was not only highly-educated and familiar with the criminal justice system (unlike the defendant in *Mathis*), Fields was expressly informed that a criminal investigation was occurring and was repeatedly told that he could leave the interview at any time he wished. Pet. App. 70a, 89a, 90a, 92a. 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. Fields sat back down to continue the interview, and this was before his incriminating statements. Pet. App. 92a–93a. Had such favorable material facts existed in *Mathis*, it seems likely the government would not have conceded custody.

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. The majority opinion inadvertently acknowledged that fact, setting forth prospective policy supporting the adoption of 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 warnings prior to a prison interrogation.

Pet. App. 20a (emphasis added). *Mathis* was decided in 1968. If, as a grant of habeas relief to a state prisoner

requires, this bright-line approach had been clearly established federal law for the last 42 years, there would be no need to extol the benefits the approach "will" provide anew in the future.

B. *Shatzer* recognized the existence of an open question regarding *Miranda*'s application in the prison context.

In support of its broad interpretation of *Mathis*, the majority below relied on this Court's recent decision in *Maryland* v. *Shatzer*. However, as in *Mathis*, "no one question[ed] that Shatzer was in custody for *Miranda* purposes[.]" 130 S Ct. at 1224. Yet, ignoring this lack of dispute over custody, the Sixth Circuit majority opinion reasoned 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. 16a.

As the concurring opinion below points out, just as in *Mathis*, the fact that custody was not at issue in *Shatzer* is hardly tantamount to clearly established precedent holding that *Miranda* warnings are required whenever a prisoner is questioned away from the general prison population.[2] Pet. App. 17a. Quite the opposite, *Shatzer* underscores the Sixth Circuit's error.

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[2] Even had *Shatzer* articulated a bright-line rule, habeas relief would be inappropriate because it was decided after the relevant decisions on the merits here and after this case became final; it cannot be retroactively applied. *Teague* v. *Lane*, 489 U.S. 288 (1988). *Mathis* was the existing precedent at the time of the decision, and no court had culled a bright-line rule from its holding.

First, this Court in *Shatzer* acknowledged that the test for analyzing Fifth-Amendment "custody" in prisons is an open question: "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue." 130 S. Ct. at 1224. Accord *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"). And that observation is dispositive here; an open question cannot be "clearly established" federal law for purposes of AEDPA. *Wright* v. *VanPatten*, 552 U.S. 120, 125 (2008); *Carey* v. *Musladin*, 549 U.S. 70, 76 (2006); *Lockhart* v. *Chandler*, 446 F.3d 721, 724 (7th Cir. 2006).

Second, *Shatzer* explains that whether incarceration amounts to custody for purposes of *Miranda* "depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against[.]" 130 S. Ct. at 1224. Far from recognizing a previously established bright-line rule, the Court reiterated that *Miranda* is driven by its purpose:

> We have declined to accord [the freedom-of-movement test] "talismanic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated."

Shatzer, 130 S. Ct. at 1224.

It would be odd indeed for this Court to have created a bright-line test, then fail to mention that test while repeatedly stressing *Miranda* is a fact-driven

analysis. In fact, shortly after *Shatzer* was decided, Justice Souter joined the First Circuit in denying a defendant's claim that incarceration automatically equals custody for *Miranda* purposes. Writing for the court in *United States* v. *Ellison*, 632 F.3d 727 (1st Cir. 2010), 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 729. Justice Souter's conclusion is the exact opposite of the bright-line test the Sixth Circuit considers "clearly established."

C. No other circuit has interpreted *Mathis* as establishing the bright-line rule the Sixth Circuit has now recognized.

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. Rather, every other circuit to consider the issue has refused to recognize such a rule. *United States* v. *Ellison*, 632 F.3d 727, 730 (1st Cir. 2010); *United States* v. *Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988); *Alston* v. *Redman*, 34 F.3d 1237, 1245 (3d Cir. 1994); *United States* v. *Conley*, 779 F.2d 970, 972 (4th Cir. 1985); *United States* v. *Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999); *United States* v. *Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994); *Leviston* v. *Black*, 843 F.2d 302, 304 (8th Cir. 1988); *United States* v. *Turner*, 28 F.3d 981, 983 (9th Cir. 1994); *United States* v. *Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984); *Garcia* v. *Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994).

Mathis was first followed in *Cervantes* v. *Walker*, 589 F.2d 424, 427 (9th Cir. 1978). There, a sheriff's

deputy took a box of marijuana found during inspection to a prisoner sitting in the prison library and asked, "What's this?" to which the prisoner replied, "That's grass, man." *Id*. at 427. He was subsequently convicted of possessing marijuana. On habeas review, the Ninth Circuit first 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." *Ibid*. The Ninth Circuit reasoned that a proper *Miranda* analysis examines the level of increased restrictions placed on a prisoner at the time of questioning:

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

Id. at 428 (citation omitted). Thus, the Ninth Circuit reconciled *Miranda* and *Mathis* by considering the extent to which a reasonable prisoner would "believe his freedom of movement had been further diminished." *Cervantes*, 589 F.2d at 429. Accord *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'"(citation omitted)).

Similarly, in *United States* v. *Conley*, 779 F.2d 970 (4th Cir. 1985), a direct-review case free from habeas-review deference, the Fourth Circuit also declined to read a bright-line rule into *Mathis*. Instead, the Fourth Circuit interpreted *Mathis* as applying the *Miranda* analysis to prisoners, rather than as creating any bright-line rule regarding custody:

> *Mathis* clearly holds that the fact that a defendant is imprisoned on an unrelated matter does not necessarily remove the necessity for *Miranda* warnings. Nothing in that opinion, however, suggests that an inmate is automatically "in custody" and therefore entitled to *Miranda* warnings, merely by virtue of his prisoner status.

Id. at 972. 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.

Id. at 973 (emphasis from opinion).

Cervantes and *Conley* represent how Mathis has generally been understood for the last 42 years. E.g., *United States* v. *Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994) (analyzing prison interview under the totality of the circumstances); *United States* v. *Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984) (applying *Cervantes* test); *Garcia* v. *Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994) *(*"[a]fter reviewing the relevant law, we find the reasoning employed in *Cervantes* and *Conley* highly persuasive."). In a recent case materially indistinguishable from this one, the Second Circuit denied habeas relief because there was no clearly established Supreme Court precedent creating a *per se* rule. *Georgison* v. *Donelli*, 588 F.3d 145, 156 (2d Cir. 2009).

Until *Simpson* and this decision, even the Sixth Circuit 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.'" *United States* v. *Ozuna*, 170 F.3d 654, 658 n.3 (6th Cir. 1999) (citing *Cervantes*). In *Simpson* and this case, the panel majorities considered this universal set of precedents as factually distinguishable. Pet. App. 8a. But that misses the point: no other circuit has interpreted *Mathis* as establishing the bright-line rule the Sixth Circuit now recognizes in *any* set of facts.

Thus, the state courts here were not "objectively unreasonable" for failing to apply the bright-line rule. It is not unreasonable for state courts to apply the reasoning of myriad appellate precedents. Yet, the majority below simply declared the state-court

adjudication "contrary to" its own interpretation of *Mathis*. Pet. App. 7a. And that is exactly the sort of collateral review that 28 U.S.C. § 2254(d) forecloses.

II. This Court should reaffirm that the context-specific analysis for determining "custody" under *Miranda* applies to suspects who are incarcerated.

The proper standard for evaluating the question whether a suspect is "in custody" for the purposes of *Miranda* requires an examination of all the circumstances of the interrogation. *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995) (if "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave," the suspect is in custody and *Miranda* warnings must be issued before any interrogation). This standard applies to all suspects, including those who are incarcerated. Given the fact that this Court has recognized that lawful confinement by itself does not "create the coercive pressures identified in *Miranda*," *Shatzer*, 130 S. Ct. at 1224, the question is whether there are additional constraints imposed on an incarcerated suspect's liberty to determine if that person is "in custody."

Thus, where a suspect is interviewed in the prison but is free to leave the interview, there is no rationale for requiring *Miranda* warnings before the interview. An incarcerated suspect should be in no better or worse a position than an ordinary, non-incarcerated citizen.

The Sixth Circuit's bright-line rule is rooted in neither *Miranda* nor the Fifth Amendment. The location of the conduct at issue is irrelevant to the question whether the setting for interrogation creates

the coercive pressures that the *Miranda* warnings were intended to counteract. Rather, the focus of the inquiry should be on the circumstances of the interrogation.

Here, Fields was informed that he was free to leave his interview. He was not deprived of his liberty in any significant way as a consequence of this interview. He was therefore not "in custody" for purposes of *Miranda*, and the Michigan Court of Appeals rightly concluded that the police had no obligation to provide a *Miranda* warning.

A. Under the reasoning of *Miranda*, whether a prisoner is "in custody" depends on the additional limitations imposed on the accused during questioning.

The overarching justification for requiring *Miranda* warnings before police interrogation is that the "inherently compelling pressures" of this setting may "undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda*, 384 U.S. at 467. This conclusion is primarily predicated on a suspect's fear that the police will continue their interrogation "until a confession is obtained." *Minnesota* v. *Murphy*, 465 U.S. 420, 433 (1984).

"Custodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Thompson* v. *Keohane*, 516 U.S. 99, 107 (1995) (quoting *Miranda*, 384 U.S. at 444). Where the police pull a person from familiar surroundings, constrain that person's liberty through "'formal arrest or restraint on freedom of

movement' of the degree associated with a formal arrest," *New York* v. *Quarles*, 467 U.S. 649, 655 (1984)(citations omitted), and question the suspect to elicit incriminating responses, the general rule is that the police must initially inform the suspect of his rights. *Miranda*, 384 U.S. at 461 ("An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak.").

But a different calculus applies where the limitations on the suspect's freedom are unrelated to the questioning, as is the case with incarceration. In that circumstance, there is no necessary relationship between compulsion to respond and the limitations of freedom imposed on the suspect. *Shatzer*, 130 S. Ct. at 1224 (a suspect's continued incarceration is "relatively disconnected" from his invocation of his right to counsel). The "danger of coercion" is built on the "*interaction* of custody and official interrogation." *Illinois* v. *Perkins*, 496 U.S. 292, 297 (1990). A prisoner who is incarcerated already has significant limitations on his freedom, regardless of the nature of any official questioning that may occur. Thus, there is no "interaction" between the general "in custody" nature of the incarceration and the interrogation.

As this Court noted in *Shatzer*, the routine conditions of life for a prisoner do not create the "coercive pressures identified in *Miranda*." 130 S. Ct. at 1224 ("lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*."). This is because prison is the familiar setting for the prisoner:

> Interrogated suspects who have previously been convicted of crime live in prison. When they are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control they had over their lives prior to the interrogation. Sentenced prisoners, in contrast to the *Miranda* paradigm, are not isolated with their accusers. They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.

Id. at 1224–25. For a suspect who invokes his right to counsel, the return to the general population is "relatively disconnected" from the refusal to give a statement:

> Their detention, moreover, is relatively disconnected from their prior unwillingness to cooperate in an investigation. The former interrogator has no power to increase the duration of incarceration, which was determined at sentencing. And even where the possibility of parole exists, the former interrogator has no apparent power to decrease the time served.

Id. at 1224–25. (footnote omitted).

The key for determining the applicability of *Miranda*, then, is whether the police have imposed new or different conditions of confinement that might reasonably compel an incarcerated suspect to speak. E.g., *Cervantes*, 589 F.2d at 428 ("In the prison situation, ['restriction'] necessarily implies *a change in*

the surroundings of the prisoner which results in an added imposition on his freedom of movement.") (emphasis added); *Georgison*, 588 F.3d at 157 ("We conclude that *Miranda* warnings were not required in this case as 'there were no restrictions on [Georgison's] freedom over and above ordinary prison confinement[.]"). Because the ordinary conditions of prison confinement as noted in *Shatzer* are not inherently coercive in contrast to custodial interrogation under *Miranda*, only the additional limitations imposed on the suspect's liberty might compel the suspect to speak. And the fact that an incarcerated suspect is interviewed alone, away from other prisoners ("isolated"), would not by itself create a coercive setting requiring *Miranda* even where that suspect is not free to leave the prison. Cf. *Berkemer* v. *McCarty*, 468 U.S. 420, 440 (1984) (no requirement to provide *Miranda* rights to a detained motorist when questioned about possible criminal activity); *Shatzer*, 130 S. Ct. at 1224 (no requirement to provide *Miranda* rights at a *Terry* stop) (citing *Terry* v. *Ohio*, 392 U.S. 1 (1968)).

In this way, the general standards for evaluating *Miranda* custody questions apply equally to prisoners and other people; there is no need for a special bright-line rule to benefit incarcerated suspects. That is because custody requires an examination of "*all* of the circumstances surrounding the interrogation[.]" *Stansbury* v. *California*, 511 U.S. 318, 322 (1994). There are two distinct inquiries: (1) what were the circumstances surrounding the interrogation; and (2) whether a reasonable person would "have felt he or she was not at liberty to terminate the interrogation and leave." *Keohane*, 516 U.S. at 112 (1995). For a prisoner,

"leav[ing]" is merely returning to the general prison population and resuming the daily life of a prisoner.

Of course, a prisoner is not free to leave the prison, but the relevant question is whether the prisoner can leave the interrogation. There is a distinction between custody for the purposes of *Miranda* and incarceration or detention. This Court acknowledged the difference in *Berkemer*, 468 U.S. at 440, where it distinguished between the constraint on one's liberty that occurs for a motorist detained at a traffic stop and "custody" as a predicate to the requirements of *Miranda*. Noting the "noncoercive" nature of the detention of a traffic stop, the Court determined that *Miranda* must be strictly enforced "but only in those types of situations in which the concerns that powered the decision are implicated." *Berkemer*, 468 U.S. at 437 ("The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*.") *Id.* at 440. Likewise, where the constraint on liberty by itself—here, jail incarceration—does not implicate *Miranda*'s considerations, there is no requirement to provide *Miranda* warnings.

As a practical matter, when a prisoner is questioned, *Miranda* concerns will generally be satisfied if the police inform the prisoner that he may return to his prison setting at any time and end the interview. E.g., *United States* v. *Ellison*, 632 F.3d 727, 730 (1st Cir. 2010) ("Detective Flanagan told Ellison that he was not under arrest for the robberies and that he did not have to answer any questions. He was interviewed in the prison library (presumably one of its more comfortable areas), he was not restrained, and he

could go from the library at any time after pressing the button to summon the guards."). This is what happened here, by Fields' own admission.

B. The Court should reject a *Miranda* bright-line rule that would treat prisoners better than ordinary citizens.

For an ordinary citizen, mere isolation from one's normal, daily environment does not require *Miranda* protection; it is just one factor to be considered among many. All surrounding circumstances must be considered to determine whether a person is in custody and deserving of *Miranda* protection, *Keohane*, 516 U.S. at 112, particularly police advice that a suspect is free to terminate the interview. *United States* v. *Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006) (noting that when police give such advice, the circuit courts generally conclude that the defendant is not in custody).

If mere isolation is insufficient to invoke *Miranda* protection generally, it should not suffice for prisoners, either. As the Ninth Circuit aptly described it, making prison a safe harbor for prisoners "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." *Cervantes*, 589 F.2d at 427. This Court should decline Fields' invitation to extend greater *Miranda* rights to prisoners than members of the general population.

C. The Court should also reject the Sixth Circuit's artificial distinction between conduct occurring within and outside a prison facility.

Whether a person is in custody for purposes for *Miranda* does not turn on the location of the conduct that is the subject of the questioning. Nonetheless, the Sixth Circuit further misinterpreted *Mathis* by concluding that its bright-line rule (itself a misreading of *Mathis*) is limited to "conduct occurring outside of the prison":

> 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*.

Pet. App. 10a (emphasis added).[3]

The Sixth Circuit's location distinction does not comport with *Miranda*. The dangers of coercion that gave rise to the *Miranda* rule arise out of "compelling pressures" of the interrogation process, *Miranda*, 384 U.S. at 467, without regard to the locus of the conduct about which questions are asked. A custodial setting is no more coercive if the suspect is questioned about

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[3] The Sixth Circuit tries to invoke *Miranda*'s "on-the-scene questioning" exception, but the Sixth Circuit's exception to its own bright-line rule is not limited to crimes that occurred in close time-proximity to the interrogation.

conduct that occurred inside the prison as opposed to outside the prison.

Why then, would the Sixth Circuit create out of whole cloth a distinction regarding "on the scene" questioning? Pet. App. 12a. Because without that distinction, the Sixth Circuit's bright-line rule would require prison officials to give a *Miranda* warning before asking *any* question of an inmate, even something as innocuous as whether an inmate saw the fight that broke out in the prison yard, or simply "what happened?"

Apparently, even the Sixth Circuit recognizes that its bright-line rule should not apply to that extreme.[4] However, its attempt to limit the rule based on the place where questioned conduct occurred is unfounded. It speaks volumes about the constitutional validity of the bright-line rule that such machinations are required to make it appear reasonable and unduly restrictive on prison administration.

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[4] This Court has recognized the importance of voluntary confessions and the role they play in criminal prosecutions. "Admissions of guilt are more than merely 'desirable'; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Moran* v. *Burbine*, 475 U.S. 412, 426 (1986) (internal quotation marks and citation omitted). The loss of "highly probative evidence of a voluntary confession" is a "high cost to legitimate law enforcement activity[.]" *Oregon* v. *Elstad*, 470 U.S. 298, 312 (1985). See also *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225 (1973).

D. The circumstances of Fields' interview demonstrate that he was not "in custody" under *Miranda*.

When Deputy Batterson interviewed Fields about his molestation of the victim, the interview occurred in a conference room adjacent to the jail. Pet. App. 110a. The conference room was well lit, included a desk, a whiteboard, and some chairs, and was not a small room. Pet. App. 88a. While being taken to the conference room, Fields conceded that "I felt like I was in a safe environment." Pet. App. 88a. The door to the conference room was open some of the time and closed some of the time. Pet. App. 70a.[5] He was not handcuffed or otherwise constrained in any way.

Most important, the record is unambiguous that Fields was informed at the beginning of (and during) the interview that he was free to leave and could end the interview at any time. The testimony came from Fields himself:

> Q: And when you got to the room, was anything said to you?

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[5] The Sixth Circuit misinterpreted this part of the record, determining that the door to the conference room was "locked." Pet. App. 13a ("[t]he conference room was locked"). See also Pet. App. 3a, 4a. The testimony of Fields was that the "J Door" was locked. Pet. App 71a, 72a. The J door separated the jail from the location of the conference room. Pet. App. 72a. Fields testified that the door to the conference room, which is a different door, was open part of the time and closed part of the time. Pet. App. 72a ("[p]art of the time it was open; part of the time was shut.") Pet. App. 70a. Later Fields stated that this door was locked, but apparently corrected himself to say "shut": "The door was locked—or shut, then it was open." Pet. App. 74a.

> A: That Mr. Batterson did say that *I could get up and leave whenever I wanted to*. However, when we got into a more-involved discussion, I tried to draw a time line on the blackboard for him, showing him the events that occurred, and I was told to—that that was not f------ important, and I needed to take a seat, and *if I did not want to cooperate*, *I needed to go back to my cell*.

Pet. App. 70a–71a (emphasis added).

While Fields also contended that he in fact would not have been allowed to leave if he requested to do so, Pet. App. 72a, he further explained that he understood that he would have been escorted back to his cell by either the interviewing officers or one of the jail guards if he had asked to leave:

> Q: So when they said that you were free to leave and you get up—could get up and go and all you had to do was tell them you wanted to go, in you mind, did you understand that to mean that somebody would come get you and take you back to your cell?
>
> A: But that doesn't give me freedom to just get up and walk away.
>
> * * *
>
> Q: That's how you got there.
>
> A: Because I did not know if a jailer [i.e., guard] would take me back or if one of

those gentlemen [i.e., interviewing deputy sheriffs] would take me back.

Q: *But you understood that, if you asked, one of them or a jailer would take you back to your cell?*

A: *I assumed that.*

Q: *And you believed that to be true*?

A: *I assumed that.*

Pet. App. 91a–92a (emphasis added).

Fields admitted that he did not ask to go back to his cell "until the end" of the interview. Pet. App. 92a–93a. He also admitted that he was not physically "uncomfortable" in the conference room; his only discomfort arose from "the things that they were saying to me"—Deputy Batterson accused him of molestation. Pet. App. 90a.

On direct review, in similar cases, the lower federal courts have reached the same conclusion the state courts did here—that *Miranda* does not apply. E.g., *Ellison*, 632 F.3d at 730 (Souter, J., writing for the panel) ("He was interviewed in the prison library (presumably one of its more comfortable areas), he was not restrained, and he could go from the library at any time after pressing the button to summon the guards."); *Georgison*, 588 F.3d at 156–157; and *Menzer*, 29 F.3d at 1232.[6] Accord *Oregon* v. *Mathiason*, 429 U.S.

[6] See also *Garcia* v. *Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994); *United States* v. *Conley*, 779 F.2d 970, 973 (4th Cir. 1985); *Cervantes* v. *Walker*, 589 F.2d 424, 429 (9th Cir. 1978).

492, 495 (1977) (interview at a police station, a "coercive environment," was not dispositive for purposes of a *Miranda* analysis; rather, the analysis must focus on the suspect's freedom—"there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way.").

In this way, the state courts were correct in concluding that Fields was not in custody for purposes of *Miranda* during his interview.[7] Fields was free to leave the conference room, return to his cell, and end the interview at any time. See *Keohane*, 516 U.S. at 112 (identifying the standard that "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave"). He was repeatedly told this. Pet. App. 70a, 89a, 90a, 92a.

Thus, even if this were a case of direct appellate review, the state court decisions would stand. Examined under the principles of habeas deference, this determination is even clearer. As noted already, whether *Miranda* rights must always be afforded to prisoners under questioning has been expressly reserved by this Court. *Perkins*, 496 U.S. at 292 ("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is

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[7] The Michigan Court of Appeals noted that while Fields was "unquestionably in custody" on an unrelated matter, that the *Miranda* warnings were not required. Pet. App. 56a. The use of "custody" by the state court was not for the purposes of *Miranda*, but rather to indicate incarceration, similar to this Court's recognition that the suspect in *Berkemer* was "temporarily detained" and not free to leave, but was not "in custody" under *Miranda*. *Berkemer*, 468 U.S. at 440.

speaking to an official, but we do not have occasion to explore that issue here."). This point was reiterated in *Shatzer*. 130 S. Ct. at 1224 ("We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue."). An open question, reserved by this Court, cannot form the basis of clearly established Supreme Court law for purposes of habeas review. *Carey* v. *Musladin*, 549 U.S. 70, 77 (2006)("Given the lack of holdings from this Court regarding the potentially prejudicial effect of spectators' courtroom conduct of the kind involved here, it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'")(citation omitted). The Michigan Court of Appeals' decision that Fields was not entitled to *Miranda* warnings was not an unreasonable application of clearly established Supreme Court precedent.[8] This Court should reverse.

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[8] The Court of Appeals' conclusion—that Fields was told "that he was free to leave the conference room and return to his cell"—was amply supported by the record. The decision that this was a circumstance in which *Miranda* was not required was not contrary to, nor an unreasonable application of, clearly established Supreme Court precedent under 28 U.S.C. § 2254(d). There was no "extreme malfunction" by the Michigan Court of Appeals in refusing to grant relief here. *Richter*, 131 S. Ct. at 786 ("Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions' . . ., not a substitute for ordinary error correction through appeal.") (citation omitted).

CONCLUSION

The judgment of the court of appeals should be reversed.

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