No. 10-680

In the Supreme Court of the United States

CAROL HOWES, PETITIONER

v.

RANDALL FIELDS, RESPONDENT

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

REPLY BRIEF

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INTRODUCTION

The issue presented in this case raises two, discrete sub-questions: (1) whether this Court in *Mathis* v. *United States*, 391 U.S. 1 (1968), created a bright-line rule compelling an official to give a *Miranda* warning whenever questioning an isolated prisoner, and (2) whether the Fifth Amendment requires such a bright-line rule. The answer to both questions is "no."

With respect to the first sub-question, this Court has generally "required police officers and courts to 'examine *all of the circumstances* surrounding the interrogation,' including any circumstances that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'" *J.D.B.* v. *North Carolina*, 131 S. Ct. 2394, 2402 (2011) (quotation omitted, emphasis added). And this Court's precedent has not recognized a bright-line exception to that rule for prisoners. To the contrary, the Court has "never decided whether incarceration constitutes custody for *Miranda* purposes, and ha[s] indeed explicitly declined to address the issue." *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224 (2010).

Relying on a "matrix" of this Court's decisions, Respondent Fields argues that this Court has given special *Miranda* treatment to prisoners. Resp. Br. 8–25. But even he "concedes that the *Shatzer* Court stated that the question of whether prison custody is the equivalent of Miranda custody has never been decided," Resp. Br. 17. Because 28 U.S.C. § 2254(d) bars any habeas remedy unless the right to relief is "clearly established" by this Court's precedent, Fields'

concession, standing alone, requires reversal of the Sixth Circuit's grant of habeas relief.

It is the *Shatzer* opinion that also explains why the Fifth Amendment does not require a bright-line test for prison interviews. Restrictions on movement (as a result of incarceration or otherwise), are a necessary but "not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. "*Miranda* is to be enforced 'only in those types of situations in which the concerns that powered the decision [i.e., threat of coercion and involuntary confessions] are implicated.'" *Ibid.* (quoting *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984)).

Questioning a prisoner apart from the rest of the prison population, without more, does not implicate *Miranda*'s concerns. *United States* v. *Ellison*, 632 F.3d 727 (1st Cir. 2010) (Souter, J.) (restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody"). The present case exemplifies that fact, as Fields repeatedly testified that he understood he could leave his interview. Pet. App. 70a–71a, 91a–92a. Accordingly, the State of Michigan respectfully requests that the Court reject any bright-line *Miranda* rule for questioning prison inmates.

REPLY ARGUMENT

Fields advances four basic arguments. First, he tries to portray the Sixth Circuit's decision as one that "looked to the circumstances of the interrogation" to determine whether the interrogation was coercive, Resp. Br. 16, an approach that would have been consistent with controlling case law. Second, Fields asserts that this Court's precedent has itself established a "bright-line" test for interrogations that occur in prisons, one under which isolation alone is *per se* coercive whenever interrogation relates to conduct that occurred outside the prison. Resp. Br. 8–35. Third, Fields argues that the circumstances of his interrogation demonstrate that he was in *Miranda* custody. Resp. Br. 35–45. And finally, Fields urges this Court to adopt a bright-line approach that applies *Miranda* to virtually all prison interviews. Resp. Br. 45–55. Each of Fields' arguments is without merit.

I. The Sixth Circuit established a new, bright-line test for determining when a *Miranda* warning must be given to a prisoner.

The Sixth Circuit unequivocally created a bright-line test that eliminated the need for any factual inquiry into the interrogation's circumstances. In fact, after stating its new rule, the Sixth Circuit extolled the rule's virtues, calling it "bright line":

> 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.

* * *

> *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. 19a, 20a (emphasis added).

Despite this clear language, Fields claims that the Sixth Circuit "looked to the circumstances of the interrogation in order to see if the element of coercive custody was present." Resp. Br. 16. That claim cannot be reconciled with what the Sixth Circuit actually said, either in defending its rule (noted above), or in its analysis of Fields' circumstances. To the contrary, the Sixth Circuit's opinion disregarded Fields' testimony about being free to leave his interview, because the mere fact that he was in a prison setting was enough to satisfy the *Miranda* custody requirement:

> Though told that he could leave at any time, exiting the conference room was a lengthy process that required a corrections officer to be summoned. Thus, Fields faced the type of "restraint on freedom of movement" necessary to be deemed in custody.

Pet. App. 13a.

In other words, the Sixth Circuit identified a restraint—awaiting corrections officers to retrieve him—that had nothing to do with the circumstances of the questioning itself. It was a limitation that resulted from the fact that Fields was a prisoner. As even the

Sixth Circuit acknowledged, that is a bright-line rule. Pet. App. 19a. It is also a rule that cannot be gleaned from this Court's precedent and, therefore, constitutes an improper basis for granting habeas relief.

II. This Court has never established a bright-line *Miranda* test for questioning prisoners.

This Court has never adopted a *per se* rule compelling an official to give a *Miranda* warning whenever questioning a prisoner in isolation about conduct that occurred outside the prison. Instead, this Court's test for interrogative custody is the same as for every other citizen: considering *all* of the circumstances surrounding the interrogation, would a reasonable person "have felt free to terminate the interview and leave." *Yarborough* v. *Alvarado*, 541 U.S. 652, 665 (2004); *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995). See also U.S. Br. 12–13.[1] As recently reiterated in *J.D.B.* v. *North Carolina*, this Court's approach represents the fact-specific inquiry that the Sixth Circuit bright-line test eschews:

> Rather than demarcate a limited set of relevant circumstances, we have required police officers and courts to "examine *all of the circumstances* surrounding the interrogation," including any circumstance that "would have

[1] *Amicus* Donovan Simpson's contention that Michigan and the United States have advanced differing positions on this point misconstrues Michigan's brief. Simpson Am. Br. 26. A *Miranda* custody inquiry examines all of the circumstances, and the most compelling fact demonstrating that Fields was free to leave and end the interview here was that he was told this at the beginning of the interview. Pet. App. 70a–71a.

> affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave."

131 S. Ct. 2394, 2402 (2011) (quoting *Stansbury* v. *California*, 511 U.S. 318, 322, 325 (1994)) (emphasis added).

In the face of this Court's pronouncements in *Shatzer* and *J.D.B.*, Fields points to no specific authority that has adopted what he contends is "clearly established," i.e., a "bright-line test" that *Miranda* is required whenever an inmate is (1) isolated from the general prison population, (2) questioned about events that occurred outside the facility, (3) by officers unaffiliated with the prison. Res. Br. 11.[2] Instead, Fields argues that a "matrix" of four cases, when considered together, create this bright-line test. Res. Br. 11–17 (citing *Miranda*, *Mathis* v. *United States*, 391 U.S. 1 (1968), *Oregon* v. *Mathiason*, 429 U.S. 492, 494 (1977), and *Illinois* v. *Perkins*, 496 U.S. 292, 297 (1990)).

Fields is wrong. No authority has proposed this "matrix" analysis, not even the Sixth Circuit. The Sixth Circuit relied exclusively on *Mathis* for its bright-line test. Pet. App. 13a. Fields abandons the Sixth Circuit's approach, instead merely noting that this Court in

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[2] The third element of this test does not appear in the Sixth Circuit formulation of the new bright-line rule. In its two statements of the rule, the Sixth Circuit does not refer to officers unaffiliated with the prison. See Pet. App. 13a, 19a. Fields' characterization of the test here would suggest a strange distinction: that there would have been no need for *Miranda* warnings had the prison officials conducted this interrogation, rather than the deputies from the local county police department.

Mathis stated that "nothing in *Miranda*, called for curtailment of the warnings solely because one was already in custody." Resp. Br. 14. This is the proper understanding of *Mathis*. See U.S. Br. 9 ("the decision only held that *Miranda* can apply to inmates even when their incarceration is for a conviction unrelated to the questioning at issue").

After reviewing the four cases that comprise his new "matrix", Fields lists five principles that "flow" from these decisions. Resp. Br. 15. The first four principles are all positions supported by Michigan in its brief on appeal.[3] But the fifth is that *Miranda* custody sufficient to require warnings in prisons exists whenever there is "isolation from the general prison population and questioning by officers unaffiliated with the facility." Resp. Br. 15. There is no explanation of how this fifth principle is derived from any of the four "matrix" decisions. Indeed, Fields inverts the habeas review standard and claims that Michigan cannot "point to any clearly established Supreme Court law which would permit officers to *omit* the advice of rights in the prison setting." Resp. Br. 25 (emphasis added). Under AEDPA, of course, it is *Fields'* burden, not Michigan's, to identify this Court's clearly established precedent that supports his position. 28 U.S.C. § 2254(a), (d); *Woodford* v. *Viciotti*, 537 U.S. 19, 24–25 (2002) ("it is the habeas applicant's burden to show that the state court applied [Supreme Court precedent]

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[3] "(1) [C]ustodial interrogation requires the advice of rights; (2) *Miranda* travels over prison walls; (3) not every official interrogation in a potentially coercive environment is in-custody questioning; (4) Miranda custody is more than ordinary prison custody[.]" Resp. Br. 15.

to the facts of his case in an objectively unreasonable manner").

Unlike Fields, *amicus* Donovan Simpson says that *Mathis* established the bright-line rule that incarceration equates to *Miranda* custody. Simpson Am. Br. 9–13. But the *Mathis* opinion did nothing more than reject two narrow, government arguments as to why *Miranda* was inapplicable: (1) that the tax investigation was civil, not criminal, and (2) that the defendant was in prison for an entirely separate offense than the one resulting in the questioning. 391 U.S. at 4. In other words, this Court rejected the government's effort to "narrow" the scope of *Miranda* only to circumstances in which the questioning was "in connection" to the case under investigation. *Mathis*, 391 U.S. at 4. *Miranda* is applicable regardless of "why the person is in custody." *Id*.

Thus, while it is true that the *Mathis* Court did not "inquire any further into the particular circumstances of the interviews," Simpson Am. Br. 11, to read that absence of discussion as a bright-line rule would mean that *every* interview occurring in a prison would require *Miranda* warnings, even those where the prisoner was not isolated. Yet *Shatzer* makes clear that this Court has "never decided whether incarceration constitutes custody for *Miranda* purposes." *Shatzer*, 130 S. Ct. at 1224 (citing *Perkins*, 496 U.S. at 299) ("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"). See also *Ellison*, 632 F.3d at 730 n.1 ("The Court . . . did not say whether the interview with Mathis fell within *Miranda*

because of his incarceration or because of some other deprivation that was significant in the circumstances. Although it did not address *Mathis*, the Court's opinion in *Shatzer* forecloses Ellison's reading of the case for the former proposition.").

Amicus Simpson's reading of *Mathis* does not even make sense. Whether an inmate is questioned by a prison guard or a police officer from outside the prison has no bearing on the key question, whether the interrogation is coercive. *Berkemer*, 468 U.S. at 437. If anything, questioning by a prison official would suggest greater coercion than questioning by an outsider because of the official's ability to control the conditions of confinement. In sum, Simpson's contention—that *Mathis* holds that an inmate is in custody whenever interrogated by officials not affiliated with the prison about conduct occurring outside the prison, Simpson Am. Br. 13—is not supported by *Miranda* or this Court's post-*Mathis* decisions, which reflect a much narrower understanding of *Mathis*.

Fields also tries to argue that the qualifier in the Sixth Circuit test—that the questions relate to "conduct occurring outside of the prison"—makes "all the difference." Resp. Br. 18, citing Pet. App. 1a. But as discussed at length in the Petitioner's Brief, the location of the alleged conduct itself is irrelevant for the consideration about whether the circumstances of the interrogation are coercive. Pet. Br. 31–32. In seeking to justify this distinction, Fields notes that there is no *Miranda* requirement for on-the-scene questioning, and such questioning occurs for conduct that occurred within the prison. Resp. Br. 50. But this

Court in *Miranda* already acknowledged that on-scene questioning does not require a reading of a suspect's rights. *Miranda* v. *Arizona*, 384 U.S. 346 (1966). The Sixth Circuit's distinction is unnecessary. And once that distinction is stripped away, all that is left of the Sixth Circuit's test is the requirement that a suspect be isolated.

Fields suggests that isolation from the general population is the kind of "incommunicado interrogation" that *Miranda* found to be abhorrent. Resp. Br. 43. But for a prisoner who knows that he may end the interview at any time, this is no different than conducting an interview at the police station, which does not always require a *Miranda* warning. *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977) ("there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way").

This argument also is belied by the practical aspects of a police interview. The suggestion that the police should question Fields in front of other prisoners about whether he engaged in sexual intercourse with underage boys is detached from the practical reality of police investigation. As a general matter, all police interrogation about crime that occurred outside the prison will occur by separating the prisoner from the other prisoners. And based on the Sixth Circuit standard, such interrogations will also have to begin with the provision of *Miranda* warnings. As a consequence, under the Sixth Circuit's rule, prisoners will paradoxically have greater protection under the Fifth Amendment than will ordinary citizens. This test is not constitutionally required and is not required by

Miranda. Rather, for prisoners as for everyone, this Court should look to *all* the circumstances to determine whether the person's liberty was impaired by the interrogation and whether the person was free to leave the interrogation.

The Sixth Circuit's *per se* rule would effectively require *Miranda* in every interview of a prisoner about conduct that occurred outside the prison. Even where the prisoner was taken to an open area, like a library, and informed about his freedom to leave and return to his cell, and was able to do so on his own accord without escort, the *Miranda* warnings would still apply. Cf. *Ellison*, 632 F.3d at 728 (interview in jail library where police officer told prisoner "that he was not under arrest for these crimes, did not have to answer any questions, and was free to end the interview at any time by pushing a button on the table to summon the guards."). Such an understanding of *Miranda* would detach the case further from its Fifth Amendment moorings, which is rooted in protecting suspects from compulsory self-incrimination.

Ultimately, however, this Court need look no farther than *Shatzer*. Even Fields now "concedes that the *Shatzer* Court stated that the question of whether prison custody is the equivalent of *Miranda* custody had never been decided." Resp. Br. 17. And this Court has never taken the next step and equated the questioning of a prison inmate in isolation with *Miranda* custody, either. As discussed below, this concession is fatal. If the Sixth Circuit's bright-line rule is not "clearly established" by this Court's precedent, and traditional *Miranda* analysis applies, then the state court ruling—that Fields was entitled to

no *Miranda* warnings because the officers conducting his interview told him he was free to leave and imposed no limitation on Fields apart from those naturally arising from his status as a prisoner—is entitled to deference.[4]

III. Under this Court's clearly established case law, Fields was not entitled to a *Miranda* warning.

To reiterate, this Court's historical *Miranda* test requires an examination of all the circumstances to determine if "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. As discussed at length in the Petitioner's Brief, Pet. Br. 6–9, 33–37, the record is clear that Fields knew that at any time, he could end his interview and leave. Pet. App. 70a–71a, 91a–92a. The officers imposed no limitations on him in addition to those related to his confinement as a prisoner. Thus, even in the absence of AEDPA deference,[5] habeas relief was inappropriate because Fields was not in custody for purposes of *Miranda*.

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[4] The Simpson *amicus* contends that *Shatzer* supports the Sixth Circuit's decision because the duration of an inmate's separation is dependent upon "his interrogators." Simpson Am. Br. 18, citing *Shatzer*, 130 S. Ct. at 1225 n.8. But where the inmate has been informed, as here, that he may return to his cell whenever he wishes to do so, the only real limitations on his liberty are imposed by virtue of the conditions of being a prisoner. Pet. App. 89a ("I was told, if I didn't want to cooperate, I could leave").

[5] Trying to avoid AEDPA deference, Fields erroneously asserts that the state courts relied on the very test rejected by *Mathis*, Resp. Br. 8, i.e., that *Miranda* is not required when the interrogation is on a matter unrelated to the incarceration. The

Despite his testimonial admissions, Fields asserts that he did not feel free to leave, that he was frightened, and that Detective Batterson "commanded him to remain seated." Resp. Br. 2. But that summary leaves out an important part of the story.

Several hours into his interview, Fields was confronted with the allegations of sexual abuse. Pet. App. 80a–81a. When officers refused to believe Fields' version of events, he got out of his chair and began yelling. Pet. App. 125a–126a. It was at this time, when Fields was out of his seat and yelling, that Batterson "commanded" him to remain seated.

Even during this incident, Fields was reminded that he could leave. Fields admitted "I was told, if I didn't want to cooperate, I could leave." Pet. App. 89a. He now asserts, however, that the Deputy "never got someone to take him back to his cell." Resp. Br. 4. That is because he never asked. To the contrary, when faced with the possibility of being returned to his cell, Fields stopped yelling, sat back down, and continued the interview. Pet. App. 125a–126a.

The other circumstances surrounding the interview were likewise not coercive. For example, it is true that

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Court of Appeals did mention that fact, but went on to explain that *Miranda* warnings were not required because the officers told Fields he was free to leave. Pet. App. 56a ("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."). As Judge McKeague observed in his Sixth Circuit concurrence, the Michigan Court of Appeals "applied the correct, context-specific *Miranda* custody test." Pet. App. 28a.

Fields was wearing prison garb, escorted to the conference room, and that the officers were armed. Resp. Br. 36–37. But these are ordinary circumstances of daily prison life. They impose no greater restriction on a prisoner's movement, nor any coercive force, beyond routine incarceration.

Fields also makes much of the fact that the J-door was locked, Resp. Br. 37, a fact unsurprising to prisoners, as the J-door is the door to the jail itself. Far more important than the door to the jail is the door to the conference room in which Fields was interviewed. That door was left standing open for part of the interview and shut for part of the interview. Pet. App. 72a. Indeed, as Fields clarified, that door was "shut," not locked like the J-door. Pet. App. 74a. Like prison garb and transportation with an escort, locking the door to the jail is incidental to and an ordinary condition of incarceration.

As strong as this case was on direct review, it should have been even stronger on collateral habeas review. Not so, argues Fields, because "Petitioner cannot point to any clearly established Supreme Court law which would permit officers to omit the advice of rights in the prison setting." Resp. Br. 25. This fundamental misunderstanding of habeas review echoes the District Court's erroneous conclusion that the state courts unreasonably interpreted *Mathis* because "Although some federal circuit courts have restricted *Mathis*, . . . this Court is bound by clearly established federal law as determined by the Supreme Court." Pet. App. 43a.

Both the plain language of 2254(d) and this Court's precedent make clear that it is the habeas *petitioner's*

burden to demonstrate that the state-court decision at issue was contrary to, or an unreasonable application of, this Court's clearly established precedent. In making that determination, the interpretation of this Court's precedent by other federal courts provides context to the reasonableness of the state courts. See *Price* v. *Vincent*, 538 U.S. 634, 643 n.2 (2003). The fact that no other circuit has found a bright-line rule for custody in the prison setting demonstrates Fields' inability to establish an unreasonable application.[6] There is no concomitant burden placed on state courts to *refute* a prisoner's claim with this Court's clearly established precedent.

Similarly, Fields misapplies the discussion in *Williams* v. *Taylor*, 529 U.S. 362, 382 (2000), explaining that the application of a general rule to a specific set of facts does not create a new rule. Fields cites this language for the proposition that the Sixth Circuit did not create a new rule, but rather, applied a general rule to the facts of this case. Resp. Br. 10–11. That argument is belied by the Sixth Circuit's own words: "*This bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in

[6] One would be hard-pressed to say the Michigan Court of Appeals was objectively unreasonable for failing to apply the bright-line rule newly created by the Sixth Circuit. No other circuit has discovered such a rule in *Mathis* or any "matrix" of cases. Like the Sixth Circuit, Fields misses this point and instead takes great pains to factually distinguish the cases from other circuits. These cases are not offered as precedent, but indicia of the objective reasonableness of the state court in failing to discern a bright-line rule loitering within a "matrix" of this Court's precedent.

isolation, away from the general prison population." Pet. App. 20a (emphasis added).

Simply put, *Miranda* mandates a fact-specific custody analysis. The Sixth Circuit broke from that precedent when it created a bright-line rule for custody in the prison setting. And without that rule, the Sixth Circuit would be forced to conclude that it was not an unreasonable application of this Court's precedent or the facts to conclude that Fields was not in custody for *Miranda* purposes when he was questioned.

IV. This Court should decline Fields' invitation to create a bright-line *Miranda* rule for prison interviews.

The debate over *Miranda*'s application in the prison setting is of immense practical significance. On the one hand, when officials have already told a prisoner that he is free to stop an interview and return to his cell, there are virtually no benefits to compelling officials to provide a *Miranda* warning. Conversely, there are substantial costs to creating such a rule, including the exclusion of truly voluntary confessions (like the one here), and the loss of voluntary confessions the rule would deter law-enforcement officials from trying to obtain in the first instance.

"Voluntary confessions are not merely 'a proper element in law enforcement,' they are an 'unmitigated good,' 'essential to society's compelling interest in finding, convicting, and punishing those who violate the law.'" *Shatzer*, 113 S. Ct. at 1222 (numerous quotations omitted). Our law should facilitate criminal confessions, provided that the circumstances surrounding the confession are not coercive. This Court

in *Miranda* adopted prophylactic measures to ensure that police questioning never compelled an individual "to speak where he would not otherwise do it freely." *Id*. at 1219 (quoting *Miranda* v. *Arizona*, 384 U.S. 436, 467 (1966)). Nothing in the circumstances here suggests that Fields' confession was anything but freely given. And nothing in the plain language of the Fifth Amendment or the *Miranda* opinion itself suggests that law-enforcement officials should be deprived of the opportunity to show that a confession was voluntary under all the circumstances, simply because the interview took place in a prison.

CONCLUSION

The judgment of the court of appeals should be reversed.

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