Criminal Procedure: Cases, Materials, and Questions

Third Edition

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Insert p. 103 after question 5

PROBLEM:

In the Fayette County Circuit Court, a grand jury charged respondent with trafficking in marijuana, first-degree trafficking in a controlled substance, and second-degree persistent felony offender status. Respondent filed a motion to suppress the evidence from the warrantless search, but the Circuit Court denied the motion. The Circuit Court concluded that the officers had probable cause to investigate the marijuana odor and that the officers "properly conducted [the investigation] by initially knocking on the door of the apartment unit and awaiting the response or consensual entry." Exigent circumstances justified the warrantless entry, the court held, because "there was no response at all to the knocking," and because "Officer Cobb heard movement in the apartment which he reasonably concluded were persons in the act of destroying evidence, particularly narcotics because of the smell." Respondent then entered a conditional guilty plea, reserving his right to appeal the denial of his suppression motion. The court sentenced respondent to 11 years' imprisonment. The Kentucky Court of Appeals affirmed. It held that exigent circumstances justified the warrantless entry because the police reasonably believed that evidence would be destroyed. The police did not impermissibly create the exigency, the court explained, because they did not deliberately evade the warrant requirement.

The Supreme Court of Kentucky Reversed. As a preliminary matter, the court observed that there was "certainly some question as to whether the sound of persons moving [inside the apartment] was sufficient to establish that evidence was being destroyed." but the court did not answer that question. Instead it "assume[d] for the purpose of argument that exigent circumstances existed."

To determine whether police impermissibly created the exigency, the supreme court of Kentucky announced a two-part test. First, the court held, police cannot "deliberately creat[e] the exigent circumstances with the bad faith intent to avoid the warrant requirement." Second, even absent bad faith, the court concluded, police may not rely on exigent circumstances if "it was reasonably foreseeable that the investigative tactics employed by the police would create the exigent circumstances." Although the Court found no evidence of bad faith, it held that exigent circumstances could not justify the search because it was reasonably foreseeable that the occupants would destroy evidence when the police knocked on the door and announced their presence.

1. Were there exigent circumstances? Explain.

2. If so, did they justify a warrantless entry? Why?

FOR THE SUPREME COURT'S PARTIAL ANSWER, SEE KENTUCKY V. KING, 563 U.S----(2011).

Insert page 611 after question 10

DAVIS v. UNITED STATES
564 U.S. ____ (2011)

JUSTICE ALITO delivered the opinion of the Court.

The Fourth Amendment protects the right to be free from "unreasonable searches and seizures," but it is silent about how this right is to be enforced. To supplement the bare text, this Court created the exclusionary rule, a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation. The question here is whether to apply this sanction when the police conduct a search in compliance with binding precedent that is later overruled. Because suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety, we hold that searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.

I

The question presented arises in this case as a result of a shift in our Fourth Amendment jurisprudence on searches of automobiles incident to arrests of recent occupants.

A

(The Court explained the line of cases from Chimel to Belton to Thornton to Gant.)

B

The search at issue in this case took place a full two years before this Court announced its new rule in Gant. On an April evening in 2007, police officers in Greenville, Alabama, conducted a routine traffic stop that eventually resulted in the arrests of driver Stella Owens (for driving while intoxicated) and passenger Willie Davis (for giving a false name to police). The police handcuffed both Owens and Davis, and they placed the arrestees in the back of separate patrol cars. The police then searched the passenger compartment of Owens's vehicle and found a revolver inside Davis's jacket pocket. Davis was indicted in the Middle District of Alabama on one count of possession of a firearm by a convicted felon.

In his motion to suppress the revolver, Davis acknowledged that the officers' search fully complied with "existing Eleventh Circuit precedent." Like most courts, the Eleventh Circuit had long read Belton to establish a bright-line rule authorizing substantially contemporaneous vehicle searches incident to arrests of recent occupants. *See United States v. Gonzalez* (upholding automobile search conducted after the defendant had been "pulled from the vehicle, handcuffed, laid on the ground, and placed under arrest"). Davis recognized that the District Court was obligated to follow this precedent, but he raised a Fourth Amendment challenge to preserve "the issue for review" on appeal. The District Court denied the motion, and Davis was convicted on the firearms charge.

While Davis's appeal was pending, this Court decided Gant. The Eleventh Circuit, in the opinion below, applied Gant's new rule and held that the vehicle search incident to Davis's arrest "violated [his] Fourth Amendment rights." As for whether this constitutional violation warranted suppression, the Eleventh Circuit viewed that as a separate issue that turned on "the potential of exclusion to deter wrongful police conduct." *Id*., at 1265 (quoting *Herring v. United States*, 555 U. S. 135, 137 (2009); internal quotation marks omitted). The court concluded that "penalizing the [arresting] officer" for following binding appellate precedent would do nothing to "dete[r] . . . Fourth Amendment violations." It therefore declined to apply the exclusionary rule and affirmed Davis's conviction. We granted certiorari.

II

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Amendment says nothing about suppressing evidence obtained in violation of this command. That rule—the

exclusionary rule—is a "prudential" doctrine, *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U. S. 357, created by this Court to "compel respect for the constitutional guaranty." Exclusion is "not a personal constitutional right," nor is it designed to "redress the injury" occasioned by an unconstitutional search. *See United States v. Janis*, 428 U. S. 433 (exclusionary rule "unsupportable as reparation or compensatory dispensation to the injured criminal"). The rule's sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations. E.g., *Herring*; *Leon*. Our cases have thus limited the rule's operation to situations in which this purpose is "thought most efficaciously served." *Calandra*. Where suppression fails to yield "appreciable deterrence," exclusion is "clearly . . . unwarranted." *Janis*.

Real deterrent value is a "necessary condition for exclusion," but it is not "a sufficient" one. *Hudson v. Michigan*, 547 U. S. 586, 596 (2006). The analysis must also account for the "substantial social costs" generated by the rule. *Leon*, supra, at 907. Exclusion exacts a heavy toll on both the judicial system and society at large. *Stone*. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. See Herring, supra, at 141. Our cases hold that society must swallow this bitter pill when necessary, but only as a "last resort." *Hudson*. For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs. *See Herring*, supra, at 141; *Leon*, supra.

Admittedly, there was a time when our exclusionary-rule cases were not nearly so discriminating in their approach to the doctrine. "Expansive dicta" in several decisions, see Hudson, suggested that the rule was a self-executing mandate implicit in the Fourth Amendment itself. See *Olmstead v. United States*, 277 U. S. 438, 462 (1928) (remarking on the "striking outcome of the Weeks case" that "the Fourth Amendment, although not referring to or limiting the use of evidence in courts, really forbade its introduction"). As late as our 1971 decision in *Whiteley v. Warden, Wyo. State Penitentiary*, the Court "treated identification of a Fourth Amendment violation as synonymous with application of the exclusionary rule." *Arizona v. Evans*. In time, however, we came to acknowledge the exclusionary rule for what it undoubtedly is—a "judicially created remedy" of this Court's own making. *Calandra*, supra, at 348. We abandoned the old, "reflexive" application of the doctrine, and imposed a more rigorous weighing of its costs and deterrence benefits. *Evans*. In a line of cases beginning with *United States v. Leon*, 468 U. S. 897, we also recalibrated our cost-benefit analysis in exclusion cases to focus the inquiry on the "flagrancy of the police misconduct" at issue. *Id.*, at 909, 911.

Other good-faith cases have sounded a similar theme. *Illinois v. Krull*, extended the good-faith exception to searches conducted in reasonable reliance on subsequently invalidated statutes. In *Arizona v. Evans*, the Court applied the good-faith exception in a case where the police reasonably relied on erroneous information concerning an arrest warrant in a database maintained by judicial employees. Most recently, in Herring, we extended Evans in a case where police employees erred in maintaining records in a war-rant database. "[I]solated," "nonrecurring" police negligence, we determined, lacks the culpability required to justify the harsh sanction of exclusion.

III

The question in this case is whether to apply the exclusionary rule when the police conduct a search in objectively reasonable reliance on binding judicial precedent. At the time of the search at issue here, we had not yet decided *Arizona v. Gant*, and the Eleventh Circuit had interpreted our decision in *New York v. Belton*, to establish a bright-line rule authorizing the

search of a vehicle's passenger compartment incident to a recent occupant's arrest. The search incident to Davis's arrest in this case followed the Eleventh Circuit's Gonzalez precedent to the letter. Although the search turned out to be unconstitutional under Gant, all agree that the officers' conduct was in strict compliance with then-binding Circuit law and was not culpable in any way.

Under our exclusionary-rule precedents, this acknowledged absence of police culpability dooms Davis's claim. Police practices trigger the harsh sanction of exclusion only when they are deliberate enough to yield "meaningful" deterrence, and culpable enough to be "worth the price paid by the justice system." *Herring*, 555 U. S., at 144. The conduct of the officers here was neither of these things. The officers who conducted the search did not violate Davis's Fourth Amendment rights deliberately, recklessly, or with gross negligence. See ibid. Nor does this case involve any "recurring or systemic negligence" on the part of law enforcement. The police acted in strict compliance with binding precedent, and their behavior was not wrongful. Unless the exclusionary rule is to become a strict-liability regime, it can have no application in this case.

Indeed, in 27 years of practice under Leon's good-faith exception, we have "never applied" the exclusionary rule to suppress evidence obtained as a result of nonculpable, innocent police conduct. *Herring*, at 144. If the police in this case had reasonably relied on a warrant in conducting their search, *see Leon*, or on an erroneous warrant record in a government database, Herring, the exclusionary rule would not apply. And if Congress or the Alabama Legislature had enacted a statute codifying the precise holding of the Eleventh Circuit's decision in Gonzalez,[1] we would swiftly conclude that "'[p]enalizing the officer for the legislature's error . . . cannot logically contribute to the deterrence of Fourth Amendment violations.' "The same should be true of Davis's attempt here to "'[p]enaliz[e] the officer for the [appellate judges'] error.' "

About all that exclusion would deter in this case is conscientious police work. Responsible law-enforcement officers will take care to learn "what is required of them" under Fourth Amendment precedent and will conform their conduct to these rules. *Hudson*, 547 U. S., at 599. But by the same
token, when binding appellate precedent specifically authorizes a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities. An officer who conducts a search in reliance on binding appellate precedent does no more than "'ac[t] as a reasonable officer would and should act' " under the circumstances. *Leon*, 468 U. S., at 920 (quoting Stone, 428 U. S., at 539– 540 (White, J., dissenting)). The deterrent effect of exclusion in such a case can only be to discourage the officer from "'do[ing] his duty.'"

That is not the kind of deterrence the exclusionary rule seeks to foster. We have stated before, and we reaffirm today, that the harsh sanction of exclusion "should not be applied to deter objectively reasonable law enforcement activity." Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule.

IV

JUSTICE BREYER'S dissent and Davis argue that, although the police conduct in this

1 Kan. Stat. Ann. §22–2501(c) (2007) ("When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of … [d]iscovering the fruits, instrumentalities, or evidence of a crime"). The Kansas Supreme Court recently struck this provision down in light of *Arizona v. Gant*. But it has applied *Illinois v. Krull*, 480 U. S. 340 (1987), and the good-faith exception to searches conducted in reasonable reliance on the statute. *See State v. Daniel*.

case was in no way culpable, other considerations should prevent the good-faith exception from applying. We are not persuaded.

A

1

The principal argument of both the dissent and Davis is that the exclusionary rule's availability to enforce new Fourth Amendment precedent is a retroactivity issue, *see Griffith v. Kentucky*, not a good-faith issue. They contend that applying the good-faith exception where police have relied on overruled precedent effectively revives the discarded retroactivity regime of *Linkletter*.

In *Linkletter*, we held that the retroactive effect of a new constitutional rule of criminal procedure should be determined on a case-by-case weighing of interests. For each new rule, Linkletter required courts to consider a three-factor balancing test that looked to the "purpose" of the new rule, "reliance" on the old rule by law enforcement and others, and the effect retroactivity would have "on the administration of justice." After "weigh[ing] the merits and demerits in each case," courts decided whether and to what extent a new rule should be given retroactive effect. In Linkletter itself, the balance of interests prompted this Court to conclude that *Mapp v. Ohio*—which incorporated the exclusionary rule against the States—should not apply retroactively to cases already final on direct review. The next year, we extended Linkletter to retroactivity determinations in cases on direct review. *See Johnson v. New Jersey* (holding that *Miranda v. Arizona*, and *Escobedo v. Illinois*, applied retroactively only to trials commenced after the decisions were released)

Over time, Linkletter proved difficult to apply in a consistent, coherent way. Individual applications of the standard "produced strikingly divergent results." Justice Harlan in particular, who had endorsed the Linkletter standard early on, offered a strong critique in which he argued that "basic judicial" norms required full retroactive application of new rules to all cases still subject to direct review. Eventually, and after more than 20 years of toil under Linkletter, the Court adopted Justice Harlan's view and held that newly announced rules of constitutional criminal procedure must apply "retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception."

2

The dissent and Davis argue that applying the good-faith exception in this case is "incompatible" with our retroactivity precedent under Griffith. We think this argument conflates what are two distinct doctrines.

Our retroactivity jurisprudence is concerned with whether, as a categorical matter, a new rule is available on direct review as a potential ground for relief. Retroactive application under Griffith lifts what would otherwise be a categorical bar to obtaining redress for the government's violation of a newly announced constitutional rule. *See Danforth*, (noting that it may "make more sense to speak in terms of the 'redressability' of violations of new rules, rather than the 'retroactivity' of such new rules"). Retroactive application does not, however, determine what "appropriate remedy" (if any) the defendant should obtain. *See Powell v. Nevada*, 511 U. S. 79, 84 (1994) (noting that it "does not necessarily follow" from retroactive application of a new rule that the defendant will "gain . . . relief"). Remedy is a separate, analytically distinct issue. As a result, the retroactive application of a new rule of substantive Fourth Amendment law raises the question whether a suppression remedy applies; it does not answer that question. *See Leon*, 468 U. S., at 906 ("Whether the exclusionary sanction is appropriately imposed in a particular case . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party

seeking to invoke the rule were violated by police conduct'").

When this Court announced its decision in Gant, Davis's conviction had not yet become final on direct review. Gant therefore applies retroactively to this case. Davis may invoke its newly announced rule of substantive Fourth Amendment law as a basis for seeking relief. *See Griffith*. The question, then, becomes one of remedy, and on that issue Davis seeks application of the exclusionary rule. But exclusion of evidence does not automatically follow from the fact that a Fourth Amendment violation occurred. See Evans, 514 U. S., at 13–14. The remedy is subject to exceptions and applies only where its "purpose is effectively advanced." *Krull*, 480 U. S., at 347.

The dissent and Davis recognize that at least some of the established exceptions to the exclusionary rule limit its availability in cases involving new Fourth Amendment rules. Suppression would thus be inappropriate, the dissent and Davis acknowledge, if the inevitable-discovery exception were applicable in this case. ("Doctrines such as inevitable discovery, independent source, attenuated basis, [and] standing . . . sharply limit the impact of newly-announced rules"). The good-faith exception, however, is no less an established limit on the remedy of exclusion than is inevitable discovery. Its application here neither contravenes Griffith nor denies retroactive effect to *Gant*.[2]

It is true that, under the old retroactivity regime of Linkletter, the Court's decisions on the "retroactivity problem in the context of the exclusionary rule" did take into account whether "law enforcement officers reasonably believed in good faith" that their conduct was in compliance with governing law. *Peltier*. As a matter of retroactivity analysis, that approach is no longer applicable. *See Griffith*. It does not follow, however, that reliance on binding precedent is irrelevant in applying the good-faith exception to the exclusionary rule. That reasonable reliance by police was once a factor in our retroactivity cases does not make it any less relevant under our Leon line of cases.[3]

B

Davis also contends that applying the good-faith exception to searches conducted in reliance on binding precedent will stunt the development of Fourth Amendment law. With no possibility of suppression, criminal defendants will have no incentive, Davis maintains, to request that courts overrule precedent.[4]

2 The dissent argues that the good-faith exception is "unlike … inevitable discovery" because the former applies in all cases where the police reasonably rely on binding precedent, while the latter "applies only upon occasion." We fail to see how this distinction makes any difference. The same could be said—indeed, the same was said—of searches conducted in reasonable reliance on statutes. *See Krull*, 480 U. S., at 368–369 (O'Connor, J., dissenting) (arguing that result in Krull was inconsistent with Griffith). When this Court strikes down a statute on Fourth Amendment grounds, the good-faith exception may prevent the exclusionary rule from applying "in every case pending when [the statute] is overturned." This result does not make the Court's newly announced rule of Fourth Amendment law any less retroactive. It simply limits the applicability of a suppression remedy. *See Krull*.

3 Nor does *United States v. Johnson*, 457 U. S. 537 (1982), foreclose application of the good-faith exception in cases involving changing law. Johnson distinguished Peltier and held that all Fourth Amendment cases should be retroactive on direct review so long as the new decision is not a "clear break" from prior precedent. Johnson had no occasion to opine on the good-faith exception to the exclusionary rule, which we adopted two years later in Leon.

4 Davis also asserts that a good-faith rule would permit "new Fourth Amendment decisions to be applied only prospectively," thus amounting to "a regime of rule-creation by advisory opinion." For reasons discussed in connection with Davis's argument that application of the good-faith exception here would revive the Linkletter regime, this argument conflates the question of retroactivity with the question of remedy.

1

This argument is difficult to reconcile with our modern understanding of the role of the exclusionary rule. We have never held that facilitating the overruling of precedent is a relevant consideration in an exclusionary-rule case. Rather, we have said time and again that the sole purpose of the exclusionary rule is to deter misconduct by law enforcement. *See*, e.g., *Sheppard*, 468 U. S., at 990 ("'adopted to deter unlawful searches by police'"); Evans, supra, at 14 ("historically designed as a means of deterring police misconduct").

We have also repeatedly rejected efforts to expand the focus of the exclusionary rule beyond deterrence of culpable police conduct. In *Leon*, for example, we made clear that that "the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges."468 U. S., at 916; see id., at 918 ("If exclusion of evidence obtained pursuant to a subsequently invalidated warrant is to have any deterrent effect . . . it must alter the behavior of individual law enforcement officers or the policies of their departments"). *Krull* too noted that "legislators, like judicial officers, are not the focus" of the exclusionary rule. And in Evans, we said that the exclusionary rule was aimed at deterring "police misconduct, not mistakes by court employees." These cases do not suggest that the exclusionary rule should be modified to serve a purpose other than deterrence of culpable law-enforcement conduct.

2

And in any event, applying the good-faith exception in this context will not prevent judicial reconsideration of prior Fourth Amendment precedents. In most instances, as in this case, the precedent sought to be challenged will be a decision of a Federal Court of Appeals or State Supreme Court. But a good-faith exception for objectively reasonable reliance on binding precedent will not prevent review and correction of such decisions. This Court re-views criminal convictions from 12 Federal Courts of Appeals, 50 state courts of last resort, and the District of Columbia Court of Appeals. If one or even many of these courts uphold a particular type of search or seizure, defendants in jurisdictions in which the question remains open will still have an undiminished incentive to litigate the issue. This Court can then grant certiorari, and the development of Fourth Amendment law will in no way be stunted.[5]

Davis argues that Fourth Amendment precedents of this Court will be effectively insulated from challenge under a good-faith exception for reliance on appellate precedent. But this argument is overblown. For one thing, it is important to keep in mind that this argument applies to an exceedingly small set of cases. Decisions overruling this Court's Fourth Amendment precedents are rare. Indeed, it has been more than 40 years since the Court last handed down a decision of the type to which Davis refers. *Chimel v. California*, 395 U. S. 752 (overruling *United States v. Rabinowitz*, 339 U. S. 56 (1950), and *Harris v. United States*, 331 U. S. 145 (1947)). And even in those cases, Davis points out that no fewer than eight separate doctrines may preclude a defendant who successfully challenges an existing precedent from getting any relief. Moreover, as a practical matter, defense counsel in many cases will test this Court's Fourth Amendment precedents in the same way that Belton was tested in Gant—by arguing that the precedent is distinguishable.[6]

5 The dissent does not dispute this point, but it claims that the good-faith exception will prevent us from "rely[ing] upon lower courts to work out Fourth Amendment differences among themselves." If that is correct, then today's holding may well lead to more circuit splits in Fourth Amendment cases and a fuller docket of Fourth Amendment cases in this Court. See this Court's Rule 10. Such a state of affairs is unlikely to result in ossification of Fourth Amendment doctrine.

6 Where the search at issue is conducted in accordance with a municipal "policy" or "custom," Fourth

At most, Davis's argument might suggest that—to prevent Fourth Amendment law from becoming ossified— the petitioner in a case that results in the overruling of one of this Court's Fourth Amendment precedents should be given the benefit of the victory by permitting the suppression of evidence in that one case. Such a result would undoubtedly be a windfall to this one random litigant. But the exclusionary rule is "not a personal constitutional right." *Stone*, 428 U. S., at 486. It is a "judicially created" sanction, *Calandra*, 414 U. S., at 348, specifically designed as a "windfall" remedy to deter future Fourth Amendment violations. *See Stone*, supra, at 490. The good-faith exception is a judicially created exception to this judicially created rule. Therefore, in a future case, we could, if necessary, recognize a limited exception to the good-faith exception for a defendant who obtains a judgment overruling one of our Fourth Amendment precedents. Cf. Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Cal. L. Rev. 929, 952–953 (1965)("[T]he same authority that empowered the Court to supplement the amendment by the exclusionary rule a hundred and twenty-five years after its adoption, likewise allows it to modify that rule as the lessons of experience may teach."[7]

But this is not such a case. Davis did not secure a decision overturning a Supreme Court precedent; the police in his case reasonably relied on binding Circuit precedent. See United States v. Gonzalez, 71 F. 3d 819. That sort of blameless police conduct, we hold, comes within the good-faith exception and is not properly subject to the exclusionary rule. [8]

It is one thing for the criminal "to go free because the constable has blundered." It is quite another to set the criminal free because the constable has scrupulously adhered to governing law. Excluding evidence in such cases deters no police misconduct and imposes substantial social costs. We therefore hold that when the police conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply. The judgment of the Court of Appeals for the Eleventh Circuit is Affirmed.

JUSTICE SOTOMAYOR, concurring in the judgment.

Amendment precedents may also be challenged, without the obstacle of the good-faith exception or qualified immunity, in civil suits against municipalities. *See* 42 U. S. C. §1983; *Los Angeles County v. Humphries* (citing Monell v. New York City Dept. of Social Servs., 436 U. S. 658, 690–691 (1978)).

7 Davis contends that a criminal defendant will lack Article III standing to challenge an existing Fourth Amendment precedent if the good-faith exception to the exclusionary rule precludes the defendant from obtaining relief based on police conduct that conformed to that precedent. This argument confuses weakness on the merits with absence of Article III standing. *See ASARCO Inc. v. Kadish* (standing does not " 'depen[d] on the merits of [a claim]' "). And as a practical matter, the argument is also overstated. In many instances, as in *Gant*, defendants will not simply concede that the police conduct conformed to the precedent; they will argue instead that the police conduct did not fall within the scope of the precedent. In any event, even if some criminal defendants will be unable to challenge some precedents for the reason that Davis suggests, that provides no good reason for refusing to apply the good-faith exception. As noted, the exclusionary rule is not a personal right, *see Stone*, 428 U. S., at 486, 490, and therefore the rights of these defendants will not be impaired. And because (at least in almost all instances) the precedent can be challenged by others, Fourth Amendment case law will not be insulated from reconsideration.

Under our precedents, the primary purpose of the exclusionary rule is "to deter future Fourth Amendment violations." Accordingly, we have held, application of the exclusionary rule is unwarranted when it "'does not result in appreciable deterrence.' *Arizona v. Evans*. In the circumstances of this case, where "binding appellate precedent specifically authorize[d] a particular police practice,"—in accord with the holdings of nearly every other court in the country— application of the exclusionary rule cannot reasonably be expected to yield appreciable deterrence. I am thus compelled to conclude that the exclusionary rule does not apply in this case and to agree with the Court's disposition.

This case does not present the markedly different question whether the exclusionary rule applies when the law governing the constitutionality of a particular search is unsettled. As we previously recognized in deciding whether to apply a Fourth Amendment holding retroactively, when police decide to conduct a search or seizure in the absence of case law (or other authority) specifically sanctioning such action, exclusion of the evidence obtained may deter Fourth Amendment violations:

> "If, as the Government argues, all rulings resolving unsettled Fourth Amendment questions should be nonretroactive, then, in close cases, law enforcement officials would have little incentive to err on the side of constitutional behavior. Official awareness of the dubious constitutionality of a practice would be counterbalanced by official certainty that, so long as the Fourth Amendment law in the area remained unsettled, evidence obtained through the questionable practice would be excluded only in the one case definitively resolving the unsettled question." *United States v. Johnson*, 457 U. S. 537, 561 (1982).

The Court of Appeals recognized as much in limiting its application of the good-faith exception it articulated in this case to situations where its "precedent on a given point [is] unequivocal.". Whether exclusion would deter Fourth Amendment violations where appellate precedent does not specifically authorize a certain practice and, if so, whether the benefits of exclusion would outweigh its costs are questions unanswered by our previous decisions.

The dissent suggests that today's decision essentially answers those questions, noting that an officer who conducts a search in the face of unsettled precedent "is no more culpable than an officer who follows erroneous 'binding precedent.' The Court does not address this issue. In my view, whether an officer's conduct can be characterized as "culpable" is not itself dispositive. We have never refused to apply the exclusionary rule where its application would appreciably deter Fourth Amendment violations on the mere ground that the officer's conduct could be characterized as nonculpable. Rather, an officer's culpability is relevant because it may inform the overarching inquiry whether exclusion would result in appreciable deterrence. ("The basic insight of the Leon line of cases is that the deterrence benefits of exclusion var[y] with the culpability of the law enforcement conduct at issue" Whatever we have said about culpability, the ultimate questions have always been, one, whether exclusion would result in appreciable deterrence and, two, whether the benefits of exclusion outweigh its costs.

As stated, whether exclusion would result in appreciable deterrence in the circumstances of this case is a different question from whether exclusion would appreciably deter Fourth Amendment violations when the governing law is unsettled. The Court's answer to the former question in this case thus does not resolve the latter one.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

In 2009, in Arizona v. Gant, this Court held that a police search of an automobile without a warrant violates the Fourth Amendment if the police have previously removed the automobile's occupants and placed them securely in a squad car. The present case involves these same circumstances, and it was pending on appeal when this Court decided Gant. Because Gant represents a "shift" in the Court's Fourth Amendment jurisprudence, we must decide whether and how Gant's new rule applies here.

I

I agree with the Court about *whether Gant* 's new rule applies. It does apply. Between 1965, when the Court decided *Linkletter* v. *Walker*, and 1987, when it decided *Griffith* v. *Kentucky*, that conclusion would have been more difficult to reach. Under *Linkletter*, the Court determined a new rule's retroactivity by looking to several different factors, including whether the new rule represented a "clear break" with the past and the degree of "reliance by law enforcement authorities on the old standards." *Desist* v. *United States*, (also citing "the purpose to be served by the new standards" and "the effect on the administration of justice" as factors). And the Court would often not apply the new rule to identical cases still pending on appeal.

After 22 years of struggling with its *Linkletter* approach, however, the Court decided in *Griffith* that *Linkletter* had proved unfair and unworkable. It then substituted a clearer approach, stating that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." The Court today, following *Griffith*, concludes that *Gant'* s new rule applies here. And to that extent I agree with its decision.

II

The Court goes on, however, to decide how Gant's new rule will apply. While conceding that, like the search in Gant, this search violated the Fourth Amendment, it holds that, unlike Gant, this defendant is not entitled to a remedy. That is because the Court finds a new "good faith" exception which prevents application of the normal remedy for a Fourth Amendment violation, namely, suppression of the illegally seized evidence. *Weeks v. United States*; *Mapp v. Ohio*. Leaving Davis with a right but not a remedy, the Court "keep[s] the word of promise to our ear" but "break[s] it to our hope."

A

At this point I can no longer agree with the Court. A new "good faith" exception and this Court's retroactivity decisions are incompatible. For one thing, the Court's distinction between (1) retroactive application of a new rule and (2) availability of a remedy is highly artificial and runs counter to precedent. To determine that a new rule is retroactive is to determine that, at least in the normal case, there is a remedy. As we have previously said, the "source of a 'new rule' is the Constitution itself, not any judicial power to create new rules of law"; hence, "[w]hat we are actually determining when we assess the 'retroactivity' of a new rule is not the temporal scope of a newly announced right, but whether a violation of the right that occurred prior to the announcement of the new rule will entitle a criminal defendant to the relief sought." The Court's "good faith" exception (unlike, say, inevitable discovery, a remedial doctrine that applies only upon occasion) creates "a categorical bar to obtaining redress" in every case pending when a precedent is overturned.

For another thing, the Court's holding re-creates the very problems that led the Court to abandon Linkletter's approach to retroactivity in favor of Griffith's. One such problem concerns

workability. The Court says that its exception applies where there is "objectively reasonable" police "reliance on binding appellate precedent." But to apply the term "binding appellate precedent" often requires resolution of complex questions of degree. Davis conceded that he faced binding anti-Gant precedent in the Eleventh Circuit. But future litigants will be less forthcoming. Indeed, those litigants will now have to create distinctions to show that previous Circuit precedent was not "binding" lest they find relief foreclosed even if they win their constitutional claim.

At the same time, Fourth Amendment precedents frequently require courts to “slosh” their “way through the factbound morass of 'reasonableness.'” *Scott v. Harris*. Suppose an officer's conduct is consistent with the language of a Fourth Amendment rule that a court of appeals announced in a case with clearly distinguishable facts? Suppose the case creating the relevant precedent did not directly announce any general rule but involved highly analogous facts? What about a rule that all other jurisdictions, but not the defendant's jurisdiction, had previously accepted? What rules can be developed for determining when, where, and how these different kinds of precedents do, or do not, count as relevant "binding precedent"? The Linkletter-like result is likely complex legal argument and police force confusion.

Another such problem concerns fairness. Today's holding, like that in *Linkletter*, "violates basic norms of constitutional adjudication." It treats the defendant in a case announcing a new rule one way while treating similarly situated defendants whose cases are pending on appeal in a different way. Justice Harlan explained why this approach is wrong when he said:

> "We cannot release criminals from jail merely because we think one case is a particularly appropriate one [to announce a constitutional doctrine] . . . . Simply fishing one case from the stream of appellate review, using it as a vehicle for pronouncing new constitutional standards, and then permitting a stream of similar cases subsequently to flow by unaffected by that new rule constitute an indefensible departure from [our ordinary] model of judicial review."

And in Griffith, the Court “embraced to a significant extent the comprehensive analysis presented by Justice Harlan.” Of course, the Court may, as it suggests, avoid this unfairness by refusing to apply the exclusionary rule even to the defendant in the very case in which it announces a "new rule." But that approach would make matters worse. What would then happen in the lower courts? How would courts of appeals, for example, come to reconsider their prior decisions when other circuits' cases lead them to believe those decisions may be wrong? Why would a defendant seek to overturn any such decision? After all, if the (incorrect) circuit precedent is clear, then even if the defendant wins (on the constitutional question), he loses (on relief). To what extent then could this Court rely upon lower courts to work out Fourth Amendment differences among themselves—through circuit reconsideration of a precedent that other circuits have criticized?

B

Perhaps more important, the Court's rationale for creating its new “good faith” exception threatens to undermine well-settled Fourth Amendment law. The Court correctly says that pre-Gant Eleventh Circuit precedent had held that a Gant-type search was constitutional; hence the police conduct in this case, consistent with that precedent was "innocent." But the Court then finds this fact sufficient to create a new "good faith" exception to the exclusionary rule. It reasons that the "sole purpose" of the exclusionary rule "is to deter future Fourth Amendment

violations." Ante, at 6. The "deterrence benefits of exclusion vary with the culpability of the law enforcement conduct at issue." Those benefits are sufficient to justify exclusion where "police exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights." But those benefits do not justify exclusion where, as here, the police act with "simple, isolated negligence" or an "objectively reasonable good-faith belief that their conduct is lawful."

If the Court means what it says, what will happen to the exclusionary rule, a rule that the Court adopted nearly a century ago for federal courts, *Weeks v. United States*, and made applicable to state courts a half century ago through the Fourteenth Amendment, *Mapp v. Ohio*? The Court has thought of that rule not as punishment for the individual officer or as reparation for the individual defendant but more generally as an effective way to secure enforcement of the Fourth Amendment's commands. *Weeks*, (without the exclusionary rule, the Fourth Amendment would be "of no value," and "might as well be stricken from the Constitution"). This Court has deviated from the "suppression" norm in the name of "good faith" only a handful of times and in limited, atypical circumstances: where a magistrate has erroneously issued a warrant, *Leon*, 468 U.S. 897 (1984) where a database has erroneously informed police that they have a warrant, *Arizona v. Evans*, 514 U. S. 1 (1995), *Herring v. United States*; and where an unconstitutional statute purported to authorize the search.

The fact that such exceptions are few and far between is understandable. Defendants frequently move to suppress evidence on Fourth Amendment grounds. In many, perhaps most, of these instances the police, uncertain of how the Fourth Amendment applied to the particular factual circumstances they faced, will have acted in objective good faith. Yet, in a significant percentage of these instances, courts will find that the police were wrong. And, unless the police conduct falls into one of the exceptions previously noted, courts have required the suppression of the evidence seized. 153 U. Pa. L. Rev. 1709, 1728 (2005) (suppression motions are filed in approximately 7% of criminal cases; approximately 12% of suppression motions are successful); LaFave, ("Surely many more Fourth Amendment violations result from carelessness than from intentional constitutional violations").

But an officer who conducts a search that he believes complies with the Constitution but which, it ultimately turns out, falls just outside the Fourth Amendment's bounds is no more culpable than an officer who follows erroneous "binding precedent." Nor is an officer more culpable where circuit precedent is simply suggestive rather than "binding," where it only describes how to treat roughly analogous instances, or where it just does not exist. Thus, if the Court means what it now says, if it would place determinative weight upon the culpability of an individual officer's conduct, and if it would apply the exclusionary rule only where a Fourth Amendment violation was "deliberate, reckless, or grossly negligent," then the "good faith" exception will swallow the exclusionary rule. Indeed, our broad dicta in Herring—dicta the Court repeats and expands upon today—may already be leading lower courts in this direction. *See United States v. Julius*, 610 F. 3d 60. (assuming warrantless search was unconstitutional and remanding for District Court to "perform the cost/benefit analysis required by Herring" and to consider "whether the degree of police culpability in this case rose beyond mere . . . negligence" before ordering suppression); *United States v. Master*, 614 F.3d 243 ("[T]he Herring Court's emphasis seems weighed more toward preserving evidence for use in obtaining convictions, even if illegally seized . . . unless the officers engage in 'deliberate, reckless, or grossly negligent conduct'" (quoting *Herring*)). Today's decision will doubtless accelerate this trend.

Any such change (which may already be underway) would affect not "an exceedingly small set of cases," but a very large number of cases, potentially many thousands each year. And

since the exclusionary rule is often the only sanction available for a Fourth Amendment violation, the Fourth Amendment would no longer protect ordinary Americans from "unreasonable searches and seizures." *Herring*, (GINSBURG, J., dissenting) (the exclusionary rule is "an essential auxiliary" to the Fourth Amendment). It would become a watered-down Fourth Amendment, offering its protection against only those searches and seizures that are egregiously unreasonable.

III

In sum, I fear that the Court's opinion will undermine the exclusionary rule. And I believe that the Court wrongly departs from Griffith regardless. Instead I would follow Griffith, apply Gant's rule retroactively to this case, and require suppression of the evidence. Such an approach is consistent with our precedent, and it would indeed affect no more than "an exceedingly small set of cases." For these reasons, with respect, I dissent.

QUESTIONS AND NOTES

1. Given *Herring*, is there any way that the police in *Davis* could be found not to have acted in good faith?

2. Should your answer to question 1 resolve the case? Why? Why not?

3. Is Justice Alito's claim that the *Gant* right is retroactive, but the *Gant* remedy is not disingenuous? Explain.

4. Do you agree that in the 27 years since *Leon*, the Court has never applied the exclusionary rule to non-culpable conduct? What about *Gant* itself? *Kyllo*?

5. Do you think that Justice Sotomayor accurately read the limits of the majority opinion?

6. If a future case comes up in which the court is asked to resolve a previously unresolved question (e.g. like *Kyllo*) and the police resolves it against the police, do you think the Court would (should) apply the good faith exception to the exclusionary rule? Why?

7. If *Arizona* had raised the question, should Gant have been allowed to benefit by the exclusionary rule?

PROBLEM:

On August 10, 2004, law enforcement officers in Tampa, Florida, seeking to apprehend respondent Kevin Dewayne Powell in connection with a robbery investigation, entered an apartment rented by Powell's girlfriend. After spotting Powell coming from a bedroom, the officers searched the room and discovered a loaded nine-millimeter handgun under the bed.

The officers arrested Powell and transported him to the Tampa Police headquarters. Once there, and before asking Powell any questions, the officers read Powell the standard Tampa Police Department Consent and Release Form 310. The form states:

> "You have the right to remain silent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk

> to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview."

Acknowledging that he had been informed of his rights, that he "underst[oo]d them," and that he was "willing to talk" to the officers, Powell signed the form. He then admitted that he owned the handgun found in the apartment. Powell knew he was prohibited from possessing a gun because he had previously been convicted of a felony, but said he had nevertheless purchased and carried the firearm for his protection.

Powell was charged in state court with possession of a weapon by a prohibited possessor, in violation of Fla. Stat. Ann. ' 790.23(1) (West 2007). Contending that the *Miranda* warnings were deficient because they did not adequately convey his right to the presence of an attorney during questioning, he moved to suppress his inculpatory statements. The trial court denied the motion, concluding that the officers had properly notified Powell of his right to counsel. A jury convicted Powell of the gun-possession charge.

On appeal, the Florida Second District Court of Appeal held that the trial court should have suppressed Powell's statements. The *Miranda* warnings, the appellate court concluded, did not Aadequately inform [Powell] of his . . . right to have an attorney present throughout [the] interrogation." Considering the issue to be "one of great public importance," the court certified the following question to the Florida Supreme Court:

> "Does the failure to provide express advice of the right to the presence of counsel during questioning vitiate *Miranda* warnings which advise of both (A) the right to talk to a lawyer 'before questioning' and (B) the 'right to use' the right to consult a lawyer 'at any time' during questioning?"

Surveying decisions of this Court as well as Florida precedent, the Florida Supreme Court answered the certified question in the affirmative. "Both *Miranda* and article I, section 9 of the Florida Constitution," the Florida High Court noted, "require that a suspect be clearly informed of the right to have a lawyer present during questioning." The court found that the advice Powell received was misleading because it suggested that Powell could "only consult with an attorney before questioning" and did not convey Powell's entitlement to counsel's presence throughout the interrogation. Nor, in the court's view, did the final catchall warningC"[y]ou have the right to use any of these rights at any time you want during this interview"C cure the defect the court perceived in the right-to-counsel advice: "The catch-all phrase did not supply the missing warning of the right to have counsel present during police questioning," the court stated, for "a right that has never been expressed cannot be reiterated."

Justice Wells dissented. He considered it "unreasonable to conclude that the broad, unqualified language read to Powell would lead a person of ordinary intelligence to believe that he or she had a limited right to consult with an attorney that could only be exercised before answering the *first* question posed by law enforcement." The final sentence of the warning, he stressed, "avoid[ed] the implicationCunreasonable as it may [have] be[en]C that advice concerning the right of access to counsel *before* questioning conveys the message that access to counsel is foreclosed *during* questioning." (Internal quotation marks omitted). Criticizing the majority's "technical adherence to language . . . that has no connection with whether the person who confessed understood his or her rights," he concluded that "[t]he totality of the warning reasonably conveyed to Powell his continuing right of access to counsel.@

How should the Supreme Court resolve this case?

For the Court's answer, see Florida v. Powell, 559 U.S. ____ (2010).

Insert p. 757 (after n. 5C replace problem)

MARYLAND *v.* SHATZER
559 U.S. ____ (2010)

J*USTICE* S*CALIA* delivered the opinion of the Court.

We consider whether a break in custody ends the presumption of involuntariness established in *Edwards* v. *Arizona,* 451 U. S. 477 (1981).

I

In August 2003, a social worker assigned to the Child Advocacy Center in the Criminal Investigation Division of the Hagerstown Police Department referred to the department allegations that respondent Michael Shatzer, Sr., had sexually abused his 3-year-old son. At that time, Shatzer was incarcerated at the Maryland Correctional Institution-Hagerstown, serving a sentence for an unrelated child-sexual-abuse offense. Detective Shane Blankenship was assigned to the investigation and interviewed Shatzer at the correctional institution on August 7, 2003. Before asking any questions, Blankenship reviewed Shatzer's *Miranda* rights with him, and obtained a written waiver of those rights. When Blankenship explained that he was there to question Shatzer about sexually abusing his son, Shatzer expressed confusion—he had thought Blankenship was an attorney there to discuss the prior crime for which he was incarcerated. Blankenship clarified the purpose of his visit, and Shatzer declined to speak without an attorney. Accordingly, Blankenship ended the interview, and Shatzer was released back into the general prison population. Shortly thereafter, Blankenship closed the investigation.

Two years and six months later, the same social worker referred more specific allegations to the department about the same incident involving Shatzer. Detective Paul Hoover, from the same division, was assigned to the investigation. He and the social worker interviewed the victim, then eight years old, who described the incident in more detail. With this new information in hand, on March 2, 2006, they went to the Roxbury Correctional Institute, to which Shatzer had since been transferred, and interviewed Shatzer in a maintenance room outfitted with a desk and three chairs. Hoover explained that he wanted to ask Shatzer about the alleged incident involving Shatzer's son. Shatzer was surprised because he thought that the investigation had been closed, but Hoover explained they had opened a new file. Hoover then read Shatzer his *Miranda* rights and obtained a written waiver on a standard department form.

Hoover interrogated Shatzer about the incident for approximately 30 minutes. Shatzer denied ordering his son to perform fellatio on him, but admitted to masturbating in front of his son from a distance of less than three feet. Before the interview ended, Shatzer agreed to Hoover's request that he submit to a polygraph examination. At no point during the interrogation did Shatzer request to speak with an attorney or refer to his prior refusal to answer questions without one.

Five days later, on March 7, 2006, Hoover and another detective met with Shatzer at the correctional facility to administer the polygraph examination. After reading Shatzer his *Miranda* rights and obtaining a written waiver, the other detective administered the test and concluded that Shatzer had failed. When the detectives then questioned Shatzer, he became upset, started to

cry, and incriminated himself by saying, "'I didn't force him. I didn't force him.'" After making this inculpatory statement, Shatzer requested an attorney, and Hoover promptly ended the interrogation.

The State's Attorney for Washington County charged Shatzer with second-degree sexual offense, sexual child abuse, second-degree assault, and contributing to conditions rendering a child in need of assistance. Shatzer moved to suppress his March 2006 statements pursuant to *Edwards.* The trial court held a suppression hearing and later denied Shatzer's motion. The *Edwards* protections did not apply, it reasoned, because Shatzer had experienced a break in custody for *Miranda* purposes between the 2003 and 2006 interrogations. Shatzer pleaded not guilty, waived his right to a jury trial, and proceeded to a bench trial based on an agreed statement of facts. In accordance with the agreement, the State described the interview with the victim and Shatzer's 2006 statements to the detectives. Based on the proffered testimony of the victim and the "admission of the defendant as to the act of masturbation," the trial court found Shatzer guilty of sexual child abuse of his son.[9]

Over the dissent of two judges, the Court of Appeals of Maryland reversed and remanded. The court held that "the passage of time *alone* is insufficient to [end] the protections afforded by *Edwards,"* and that, assuming, *arguendo,* a break-in-custody exception to *Edwards* existed, Shatzer's release back into the general prison population between interrogations did not constitute a break in custody. We granted certiorari.

II

In *Miranda* v. *Arizona,* the Court adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right from the "inherently compelling pressures" of custodial interrogation. The Court observed that "incommunicado interrogation" in an "unfamiliar," "police-dominated atmosphere," involves psychological pressures "which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." Consequently, it reasoned, "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

In *Edwards,* the Court determined that *Zerbst's* traditional standard for waiver was not sufficient to protect a suspect's right to have counsel present at a subsequent interrogation if he had previously requested counsel; "additional safeguards" were necessary. The Court therefore superimposed a "second layer of prophylaxis." *Edwards* held:

> "[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. . . . [He] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police."

The rationale of *Edwards* is that once a suspect indicates that "he is not capable of undergoing [custodial] questioning without advice of counsel," "any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the 'inherently compelling pressures' and not the purely voluntary choice of the suspect." *Roberson.*

9 The State filed a nolle prosequi to the second-degree sexual offense charge, and consented to dismissal of the misdemeanor charges as barred by the statute of limitations.

Under this rule, a voluntary *Miranda* waiver is sufficient at the time of an initial attempted interrogation to protect a suspect's right to have counsel present, but it is not sufficient at the time of subsequent attempts if the suspect initially requested the presence of counsel. The implicit assumption, of course, is that the subsequent requests for interrogation pose a significantly greater risk of coercion. That increased risk results not only from the police's persistence in trying to get the suspect to talk, but also from the continued pressure that begins when the individual is taken into custody as a suspect and sought to be interrogated—pressure likely to "increase as custody is prolonged." *Minnick*. The *Edwards* presumption of involuntariness ensures that police will not take advantage of the mounting coercive pressures of "prolonged police custody," by repeatedly attempting to question a suspect who previously requested counsel until the suspect is "badgered into submission."

We have frequently emphasized that the *Edwards* rule is not a constitutional mandate, but judicially prescribed prophylaxis. Because *Edwards* is "our rule, not a constitutional command," "it is our obligation to justify its expansion." *Roberson,* (K*ENNEDY,* J., dissenting). Lower courts have uniformly held that a break in custody ends the *Edwards* presumption.

A judicially crafted rule is "justified only by reference to its prophylactic purpose," and applies only where its benefits outweigh its costs. We begin with the benefits. *Edwards'* presumption of involuntariness has the incidental effect of "conserv[ing] judicial resources which would otherwise be expended in making difficult determinations of voluntariness." Its fundamental purpose, however, is to "[p]reserv[e] the integrity of an accused's choice to communicate with police only through counsel," by "prevent[ing] police from badgering a defendant into waiving his previously asserted *Miranda* rights." Thus, the benefits of the rule are measured by the number of coerced confessions it suppresses that otherwise would have been admitted.

It is easy to believe that a suspect may be coerced or badgered into abandoning his earlier refusal to be questioned without counsel in the paradigm *Edwards* case. That is a case in which the suspect has been arrested for a particular crime and is held in uninterrupted pretrial custody while that crime is being actively investigated. After the initial interrogation, and up to and including the second one, he remains cut off from his normal life and companions, "thrust into" and isolated in an "unfamiliar," "police-dominated atmosphere," where his captors "appear to control [his] fate." That was the situation confronted by the suspects in *Edwards, Roberson,* and *Minnick,* the three cases in which we have held the *Edwards* rule applicable. Edwards was arrested pursuant to a warrant and taken to a police station, where he was interrogated until he requested counsel. The officer ended the interrogation and took him to the county jail,[10] but at 9:15 the next morning, two of the officer's colleagues reinterrogated Edwards at the jail. Roberson was arrested "at the scene of a just-completed burglary" and interrogated there until he requested a lawyer. A different officer interrogated him three days later while he "was still in custody pursuant to the arrest." Minnick was arrested by local police and taken to the San Diego jail, where two FBI agents interrogated him the next morning until he requested counsel. Two days later a Mississippi Deputy Sheriff reinterrogated him at the jail. None of these suspects regained a sense of control or normalcy after they were initially taken into custody for the crime under investigation.

10 Jail is a "local government's detention center where persons awaiting trial or those convicted of misdemeanors are confined." Black's Law Dictionary 910 (9th ed. 2009). Prison, by contrast, is a "state or federal facility of confinement for convicted criminals, esp. felons." *Id., at 1314*.

When, unlike what happened in these three cases, a suspect has been released from his pretrial custody and has returned to his normal life for some time before the later attempted interrogation, there is little reason to think that his change of heart regarding interrogation without counsel has been coerced. He has no longer been isolated. He has likely been able to seek advice from an attorney, family members, and friends.[11] And he knows from his earlier experience that he need only demand counsel to bring the interrogation to a halt; and that investigative custody does not last indefinitely. In these circumstances, it is far-fetched to think that a police officer's asking the suspect whether he would like to waive his *Miranda* rights will any more “wear down the accused," than did the first such request at the original attempted interrogation—which is of course not deemed coercive. His change of heart is less likely attributable to "badgering" than it is to the fact that further deliberation in familiar surroundings has caused him to believe (rightly or wrongly) that cooperating with the investigation is in his interest. Uncritical extension of *Edwards* to this situation would not significantly increase the number of genuinely coerced confessions excluded. The "justification for a conclusive presumption disappears when application of the presumption will not reach the correct result most of the time."

At the same time that extending the *Edwards* rule yields diminished benefits, extending the rule also increases its costs: the in-fact voluntary confessions it excludes from trial, and the voluntary confessions it deters law enforcement officers from even trying to obtain. Voluntary confessions are not merely "a proper element in law enforcement," *Miranda,* they are an "unmitigated good," *McNeil,* 501 U. S., at 181, "'essential to society's compelling interest in finding, convicting, and punishing those who violate the law,'" (quoting *Moran* v. *Burbine,* 475 U. S. 412, 426 (1986)). The only logical endpoint of *Edwards* disability is termination of *Miranda* custody and any of its lingering effects. Without that limitation—and barring some purely arbitrary time-limit—every *Edwards* prohibition of custodial interrogation of a particular suspect would be eternal. The prohibition applies, of course, when the subsequent interrogation pertains to a different crime, *Roberson,* when it is conducted by a different law enforcement authority, *Minnick,* and even when the suspect has met with an attorney after the first interrogation. And it not only prevents questioning *ex ante;* it would render invalid *ex post,* confessions invited and obtained from suspects who (unbeknownst to the interrogators) have acquired *Edwards* immunity previously in connection with any offense in any jurisdiction. In a country that harbors a large number of repeat offenders, this consequence is disastrous.

We conclude that such an extension of *Edwards* is not justified; we have opened its "protective umbrella" far enough. The protections offered by *Miranda,* which we have deemed sufficient to ensure that the police respect the suspect's desire to have an attorney present the first time police interrogate him, adequately ensure that result when a suspect who initially requested counsel is reinterrogated after a break in custody that is of sufficient duration to dissipate its coercive effects.

If Shatzer's return to the general prison population qualified as a break in custody (a question we address in Part III, *infra),* there is no doubt that it lasted long enough (2 1/2 years) to meet that durational requirement. But what about a break that has lasted only one year? Or only one week? It is impractical to leave the answer to that question for clarification in future case-by-

11 Justice Stevens points out, (opinion concurring in judgment), that in Minnick, actual pre-reinterrogation consultation with an attorney during continued custody did not suffice to avoid application of Edwards. That does not mean that the ability to consult freely with attorneys and others does not reduce the level of coercion at all, or that it is “only questionably relevant,” to whether termination of custody reduces the coercive pressure that is the basis for Edwards’ super-prophylactic rule.

case adjudication; law enforcement officers need to know, with certainty and beforehand, when renewed interrogation is lawful. And while it is certainly unusual for this Court to set forth precise time limits governing police action, it is not unheard-of. In *County of Riverside* v. *McLaughlin,* 500 U. S. 44 (1991), we specified 48 hours as the time within which the police must comply with the requirement of *Gerstein* v. *Pugh,* 420 U. S. 103 (1975), that a person arrested without a warrant be brought before a magistrate to establish probable cause for continued detention.

Like *McLaughlin,* this is a case in which the requisite police action (there, presentation to a magistrate; here, abstention from further interrogation) has not been prescribed by statute but has been established by opinion of this Court. We think it appropriate to specify a period of time to avoid the consequence that continuation of the *Edwards* presumption "will not reach the correct result most of the time." It seems to us that period is 14 days. That provides plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.

The 14-day limitation meets Shatzer's concern that a break-in-custody rule lends itself to police abuse. He envisions that once a suspect invokes his *Miranda* right to counsel, the police will release the suspect briefly (to end the *Edwards* presumption) and then promptly bring him back into custody for reinterrogation. But once the suspect has been out of custody long enough (14 days) to eliminate its coercive effect, there will be nothing to gain by such gamesmanship—nothing, that is, except the entirely appropriate gain of being able to interrogate a suspect who has made a valid waiver of his *Miranda* rights.

IV

A few words in response to Justice Stevens' concurrence: It claims we ignore that "[w]hen police tell an indigent suspect that he has the right to an attorney" and then "reinterrogate" him without providing a lawyer, "the suspect is likely to feel that the police lied to him and that he really does not have any right to a lawyer." The fallacy here is that we are not talking about "reinterrogating" the suspect; we are talking about *asking his permission* to be interrogated. An officer has in no sense lied to a suspect when, after advising, as *Miranda* requires, "You have the right to remain silent, and if you choose to speak you have the right to the presence of an attorney," he promptly ends the attempted interrogation because the suspect declines to speak without counsel present, and then, two weeks later, reapproaches the suspect and asks, "Are you now willing to speak without a lawyer present?"

The "concer[n] that motivated the *Edwards* line of cases" is that the suspect will be coerced into saying yes. That concern guides our decision today. Contrary to the concurrence's conclusion, there is no reason to believe a suspect will view confession as "'the only way to end his interrogation'" when, before the interrogation begins, he is told that he can avoid it by simply requesting that he not be interrogated without counsel present—an option that worked before. If, as the concurrence argues will often be the case, a break in custody does not change the suspect's mind, he need only say so.

The concurrence also accuses the Court of "ignor[ing] that when a suspect asks for counsel, until his request is answered, there are still the same 'inherently compelling' pressures of custodial interrogation on which the *Miranda* line of cases is based." We do not ignore these pressures; nor do we suggest that they disappear when custody is recommenced after a break. But if those pressures are merely "the same" as before, then *Miranda* provides sufficient protection—as it did before. The *Edwards* presumption of involuntariness is justified only in circumstances where the coercive pressures have increased so much that suspects' waivers of *Miranda* rights are likely to be involuntary most of the time. Contrary to the concurrence's suggestion, it is only in those narrow circumstances—when custody is unbroken—that the Court has concluded a "fresh se[t] of *Miranda* warnings" is not sufficient.

In the last analysis, it turns out that the concurrence accepts our principal points. It agrees that *Edwards* prophylaxis is not perpetual; it agrees that a break in custody reduces the inherently compelling pressure upon which *Edwards* was based; it agrees that Shatzer's release back into the general prison population constituted a break in custody; and it agrees that in this case the break was long enough to render *Edwards* inapplicable. We differ in two respects: Instead of terminating *Edwards* protection when the custodial pressures that were the basis for that protection dissipate, the concurrence would terminate it when the suspect would no longer "feel that he has 'been denied the counsel he has clearly requested.'" This is entirely unrelated to the rationale of *Edwards.* If confidence in the police's promise to provide counsel were the touchstone, *Edwards* would not have applied in *Minnick,* where the suspect in continuing custody actually met with appointed counsel. The concurrence's rule is also entirely unrelated to the existence of a break in custody. While that may relieve the accumulated coercive pressures of custody that are the foundation for *Edwards,* it is hard to see how it bolsters the suspect's confidence that if he asks for counsel he will get one.

And secondly, the concurrence differs from us in declining to say *how long* after a break in custody the termination of *Edwards* protection occurs. Two and one-half years, it says, is clearly enough—but it gives law enforcement authorities no further guidance. The concurrence criticizes our use of 14 days as arbitrary and unexplained. But in fact that rests upon the same basis as the concurrence's own approval of a 2 1/2-year break in custody: how much time will justify "treating the second interrogation as no more coercive than the first." Failure to say where the line falls short of 2 1/2 years, and leaving that for future case-by-case determination, is certainly less helpful, but not at all less arbitrary.

***

Because Shatzer experienced a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation, *Edwards* does not mandate suppression of his March 2006 statements. Accordingly, we reverse the judgment of the Court of Appeals of Maryland, and remand the case for further proceedings not inconsistent with this opinion.

JUSTICE THOMAS, concurring in part and concurring in the judgment.

It is not apparent to me that the presumption of involuntariness the Court recognized in *Edwards* is justifiable even in the custodial setting to which *Edwards* applies it. See, *e.g., Minnick* v. *Mississippi* (*SCALIA,* J., dissenting). Accordingly, I would not extend the *Edwards* rule "beyond the circumstances present in *Edwards* itself." But even if one believes that the Court is obliged to apply *Edwards* to any case involving continuing custody, the Court's opinion today goes well beyond that. It extends the presumption of involuntariness *Edwards* applies in custodial settings to interrogations that occur after custody ends.

The Court concedes that this extension, like the *Edwards* presumption itself, is not constitutionally required. The Court nevertheless defends the extension as a judicially created prophylaxis against compelled confessions. Even if one accepts that such prophylaxis is both permissible generally and advisable for some period following a break in custody,[12] the Court's

12 At a minimum the latter proposition is questionable. I concede that some police officers might badger a suspect during a subsequent interrogation after a break in custody, or might use catch-and-release tactics to suggest they will not take no for an answer. But if a suspect reenters custody after being questioned and released, he need only invoke his right to counsel to ensure Edwards' protection for the duration of the subsequent detention. And, if law enforcement officers repeatedly release and recapture a suspect to wear down his will—such that his participation in a subsequent interrogation is no longer truly voluntary—the "high standar[d] of proof for the waiver of constitutional rights [set forth in] Johnson v. Zerbst," will protect against the admission of the suspect's statements in court. *Miranda v. Arizona*, 384 U. S. 436, 475 (1966). The Zerbst inquiry takes into account the totality of the

14-day rule fails to satisfy the criteria our precedents establish for the judicial creation of such a safeguard.

Our precedents insist that judicially created prophylactic rules like those in *Edwards* and *Miranda* v. *Arizona,* maintain "the closest possible fit" between the rule and the Fifth Amendment interests they seek to protect. The Court's 14-day rule does not satisfy this test. The Court relates its 14-day rule to the Fifth Amendment simply by asserting that 14 days between release and recapture should provide "plenty of time for the suspect . . . to shake off any residual coercive effects of his prior custody."

This *ipse dixit* does not explain why extending the *Edwards* presumption for 14 days following a break in custody—as opposed to 0, 10, or 100 days—provides the "closest possible fit" with the Self-incrimination Clause, (merely stating that "[i]t seems to us that" the appropriate "period is 14 days"). Nor does it explain how the benefits of a prophylactic 14-day rule (either on its own terms or compared with other possible rules) "outweigh its costs" (which would include the loss of law enforcement information as well as the exclusion of confessions that are in fact voluntary).

To be sure, the Court's rule has the benefit of providing a bright line. But bright-line rules are not necessary to prevent Fifth Amendment violations, as the Court has made clear when refusing to adopt such rules in cases involving other *Miranda* rights. *See*, e.g., *Michigan* v. *Mosley*). And an otherwise arbitrary rule is not justifiable merely because it gives clear instruction to law enforcement officers.[13]

As the Court concedes, "clarity and certainty are not goals in themselves. They are valuable only when they reasonably further the achievement of some substantive end—here, the exclusion of compelled confessions" that the Fifth Amendment prohibits. The Court's arbitrary 14-day rule fails this test, even under the relatively permissive criteria set forth in our precedents. Accordingly, I do not join that portion of the Court's opinion.

Justice Stevens, concurring in the judgment.

While I agree that the presumption from *Edwards* v. *Arizona* is not "eternal," and does not mandate suppression of Shatzer's statement made after a 2 1/2-year break in custody, I do not agree with the Court's newly announced rule: that *Edwards always* ceases to apply when there is a 14-day break in custody.

In conducting its "cost-benefit" analysis, the Court demeans *Edwards* as a '"second layer'" of "judicially prescribed prophylaxis," (describing *Edwards* as our rule, not a constitutional command'" (quoting *Arizona* v. *Roberson,* (Kennedy, J., dissenting))). The source of the holdings in the long line of cases that includes both *Edwards* and *Miranda,* however, is the Fifth Amendment's protection against compelled self-incrimination applied to the "compulsion

circumstances surrounding the waiver—including any improper pressures by police. See id., at 464; cf. ante, at 11–12, n. 6 (stating that "[e]ven without [Edwards'] second layer of prophylaxis, a defendant is still free to claim the prophylactic protection of Miranda—arguing that his waiver of Miranda rights was in fact involuntary under Johnson v. Zerbst" (internal quotation marks and citation omitted)).

13 Though the Court asserts that its 14-day rule will tell "law enforcement officers . . . with certainty and beforehand, when renewed interrogation is lawful," that is not so clear. Determining whether a suspect was previously in custody, and when the suspect was released, may be difficult without questioning the suspect, especially if state and federal authorities are conducting simultaneous investigations.

inherent in custodial" interrogation, and the “significan[ce]” of "the assertion of the right to counsel.” The Court's analysis today is insufficiently sensitive to the concerns that motivated the *Edwards* line of cases.

I

The most troubling aspect of the Court's time-based rule is that it disregards the compulsion caused by a second (or third, or fourth) interrogation of an indigent suspect who was told that if he requests a lawyer, one will be provided for him. When police tell an indigent suspect that he has the right to an attorney, that he is not required to speak without an attorney present, and that an attorney will be provided to him at no cost before questioning, the police have made a significant promise. If they cease questioning and then reinterrogate the suspect 14 days later without providing him with a lawyer, the suspect is likely to feel that the police lied to him and that he really does not have any right to a lawyer.

When officers informed Shatzer of his rights during the first interrogation, they presumably informed him that if he requested an attorney, one would be appointed for him before he was asked any further questions. But if an indigent suspect requests a lawyer, "any further interrogation" (even 14 days later) "without counsel having been provided will surely exacerbate whatever compulsion to speak the suspect may be feeling." When police have not honored an earlier commitment to provide a detainee with a lawyer, the detainee likely will "understan[d] his (expressed) wishes to have been ignored" and "may well see further objection as futile and confession (true or not) as the only way to end his interrogation." Simply giving a "fresh se[t] of *Miranda* warnings" will not "'reassure' a suspect who has been denied the counsel he has clearly requested that his rights have remained untrammeled."

II

The Court never explains why its rule cannot depend on, in addition to a break in custody and passage of time, a concrete event or state of affairs, such as the police having honored their commitment to provide counsel. Instead, the Court simply decides to create a time-based rule, and in so doing, disregards much of the analysis upon which *Edwards* and subsequent decisions were based. "[T]he assertion of the right to counsel" "[i]s a significant event." *Edwards*. As the Court today acknowledges, the right to counsel, like the right to remain silent, is one that police may "coerc[e] or badge[r]," a suspect into abandoning.

However, as discussed above, the Court ignores the effects not of badgering but of reinterrogating a suspect who took the police at their word that he need not answer questions without an attorney present. The Court, moreover, ignores that when a suspect asks for counsel, until his request is answered, there are still the same "inherently compelling" pressures of custodial interrogation on which the *Miranda* line of cases is based, and that the concern about compulsion is especially serious for a detainee who has requested a lawyer, an act that signals his "inability to cope with the pressures of custodial interrogation."

Instead of deferring to these well-settled understandings of the *Edwards* rule, the Court engages in its own speculation that a 14-day break in custody eliminates the compulsion that animated *Edwards.* But its opinion gives no strong basis for believing that this is the case. A 14-day break in custody does not eliminate the rationale for the initial *Edwards* rule: The detainee has been told that he may remain silent and speak only through a lawyer and that if he cannot afford an attorney, one will be provided for him. He has asked for a lawyer. He does not have one. He is in custody. And police are still questioning him. A 14-day break in custody does not change the fact that custodial interrogation is inherently compelling. It is unlikely to change the fact that a detainee "considers himself unable to deal with the pressures of custodial interrogation without legal assistance." And in some instances, a 14-day break in custody may make matters

worse "[w]hen a suspect understands his (expressed) wishes to have been ignored" and thus "may well see further objection as futile and confession (true or not) as the only way to end his interrogation."

The Court ignores these understandings from the *Edwards* line of cases and instead speculates that if a suspect is reinterrogated and eventually talks, it must be that "further deliberation in familiar surroundings has caused him to believe (rightly or wrongly) that cooperating with the investigation is in his interest." But it is not apparent why that is the case. The answer, we are told, is that once a suspect has been out of *Miranda* custody for 14 days, "[h]e has likely been able to seek advice from an attorney, family members, and friends." This speculation, however, is overconfident and only questionably relevant. As a factual matter, we do not know whether the defendant has been able to seek advice: First of all, suspects are told that if they cannot afford a lawyer, one will be provided for them. Yet under the majority's rule, an indigent suspect who took the police at their word when he asked for a lawyer will nonetheless be assumed to have "been able to seek advice from an attorney." Second, even suspects who are not indigent cannot necessarily access legal advice (or social advice as the Court presumes) within 14 days. Third, suspects may not realize that they *need* to seek advice from an attorney. Unless police warn suspects that the interrogation will resume in 14 days, why contact a lawyer? When a suspect is let go, he may assume that the police were satisfied. In any event, it is not apparent why interim advice matters. In *Minnick*, we held that it is not sufficient that a detainee happened to speak at some point with a lawyer. (noting that "consultation with an attorney" does not prevent "persistent attempts by officials to persuade [a suspect] to waive his rights" or shield against the "coercive pressures that accompany custody"). If the actual interim advice of an attorney is not sufficient, the hypothetical, interim advice of "an attorney, family members, and friends," is not enough.

III

Because, at the very least, we do not know whether Shatzer could obtain a lawyer, and thus would have felt that police had lied about providing one, I cannot join the Court's opinion. I concur in today's judgment, however, on another ground: Even if Shatzer could not consult a lawyer and the police never provided him one, the 2 1/2-year break in custody is a basis for treating the second interrogation as no more coercive than the first. Neither a break in custody nor the passage of time has an inherent, curative power. But certain things change over time. An indigent suspect who took police at their word that they would provide an attorney probably will feel that he has "been denied the counsel he has clearly requested," when police begin to question him, without a lawyer, only 14 days later.[15] But, when a suspect has been left alone for a significant period of time, he is not as likely to draw such conclusions when the police interrogate him again.[16] It is concededly "impossible to determine with precision" where to draw such a line. In the case before us, however, the suspect was returned to the general prison population for 2 1/2 years. I am convinced that this period of time is sufficient. I therefore concur in the judgment.

Questions and Notes

1. Why do you suppose Justice Scalia wrote this opinion? Is he now resigned to *Miranda*?

2. Why 14 days? Why not 15 or 13? Is there any magic to 14? Assuming that Schatzer was not in custody for *Miranda* purposes once he was returned to the general prison

population (a point to be discussed, *infra*), why should it matter whether or not he had been out of custody for fourteen days?

3. Does Justice Stevens' opinion make any sense? If 14 days would have been insufficient why was 2 ½ years sufficient (especially since he was incarcerated during that period of time)?

4. In regard to the Stevens opinion, did the police promise to get him a lawyer or just not to question him without one? Did they break their promise, regardless of the answer?

5. After *Schatzer* does a defendant have more rights, fewer rights, or the same rights as he/she did before *Schatzer*?

Insert P. 774

BERGHUIS *v.* THOMPKINS

JUSTICE KENNEDY delivered the opinion of the Court.

The United States Court of Appeals for the Sixth Circuit, in a habeas corpus proceeding challenging a Michigan conviction for first-degree murder and certain other offenses, determined that a statement by the accused, relied on at trial by the prosecution, had been elicited in violation of *Miranda* v. *Arizona*.

I

A

On January 10, 2000, a shooting occurred outside a mall in Southfield, Michigan. Among the victims was Samuel Morris, who died from multiple gunshot wounds. The other victim, Frederick France, recovered from his injuries and later testified. Thompkins, who was a suspect, fled. About one year later he was found in Ohio and arrested there.

Two Southfield police officers traveled to Ohio to interrogate Thompkins, then awaiting transfer to Michigan. The interrogation began around 1:30 p.m. and lasted about three hours. The interrogation was conducted in a room that was 8 by 10 feet, and Thompkins sat in a chair that resembled a school desk (it had an arm on it that swings around to provide a surface to write on). At the beginning of the interrogation, one of the officers, Detective Helgert, presented Thompkins with a form derived from the *Miranda* rule. It stated:

"NOTIFICATION OF CONSTITUTIONAL RIGHTS
AND STATEMENT"

"1. You have the right to remain silent.
"2. Anything you say can and will be used against you in a court of law.
"3. You have a right to talk to a lawyer before answering any questions and you have the right to have a lawyer present with you while you are answering any questions.
"4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
"5. You have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned."

Helgert asked Thompkins to read the fifth warning out loud. Thompkins complied. Helgert later said this was to ensure that Thompkins could read, and Helgert concluded that Thompkins understood English. Helgert then read the other four *Miranda* warnings out loud and asked Thompkins to sign the form to demonstrate that he understood his rights. Thompkins declined to sign the form. The record contains conflicting evidence about whether Thompkins then verbally confirmed that he understood the rights listed on the form. Compare (at a suppression hearing, Helgert testified that Thompkins verbally confirmed that he understood his rights), with (at trial, Helgert stated, "I don't know that I orally asked him" whether Thompkins understood his rights).

Officers began an interrogation. At no point during the interrogation did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney. Thompkins was "[l]argely" silent during the interrogation, which lasted about three hours. He did give a few limited verbal responses, however, such as "yeah," "no," or "I don't know." And on occasion he communicated by nodding his head. Thompkins also said that he "didn't want a peppermint" that was offered to him by the police and that the chair he was "sitting in was hard."

About 2 hours and 45 minutes into the interrogation, Helgert asked Thompkins, "Do you believe in God?" Thompkins made eye contact with Helgert and said "Yes," as his eyes "well[ed] up with tears." Helgert asked, "Do you pray to God?" Thompkins said "Yes." Helgert asked, "Do you pray to God to forgive you for shooting that boy down?" Thompkins answered "Yes" and looked away. Thompkins refused to make a written confession, and the interrogation ended about 15 minutes later.

Thompkins was charged with first-degree murder, assault with intent to commit murder, and certain firearms-related offenses. He moved to suppress the statements made during the interrogation. He argued that he had invoked his Fifth Amendment right to remain silent, requiring police to end the interrogation at once, see *Michigan* v. *Mosley,* that he had not waived his right to remain silent, and that his inculpatory statements were involuntary. The trial court denied the motion.

B

The trial court denied a motion for new trial filed by Thompkins's appellate counsel.

Thompkins appealed the trial court's refusal to suppress his pretrial statements under *Miranda.* The Michigan Court of Appeals rejected the *Miranda* claim, ruling that Thompkins had not invoked his right to remain silent and had waived it.

Thompkins filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Michigan. The District Court rejected Thompkins's *Miranda* claim. It noted that, under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a federal court cannot grant a petition for a writ of habeas corpus unless the state court's adjudication of the merits was "contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U. S. C. §2254(d)(1). The District Court reasoned that Thompkins did not invoke his right to remain silent and was not coerced into making statements during the interrogation. It held further that the Michigan Court of Appeals was not unreasonable in determining that Thompkins had waived his right to remain silent.

The United States Court of Appeals for the Sixth Circuit reversed, ruling for Thompkins on his *Miranda* claim. The Court of Appeals ruled that the state court, in rejecting Thompkins's

Miranda claim, unreasonably applied clearly established federal law and based its decision on an unreasonable determination of the facts.

We granted certiorari.

II

Under AEDPA, a federal court may not grant a habeas corpus application "with respect to any claim that was adjudicated on the merits in State court proceedings," 28 U. S. C. §2254(d), unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," §2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

III

All concede that the warning given in this case was in full compliance with these requirements. The dispute centers on the response—or nonresponse—from the suspect.

A

Thompkins makes various arguments that his answers to questions from the detectives were inadmissible. He first contends that he "invoke[d] his privilege" to remain silent by not saying anything for a sufficient period of time, so the interrogation should have "cease[d]" before he made his inculpatory statements. See *Mosley,* (police must "'scrupulously hono[r]'" this "critical safeguard" when the accused invokes his or her "'right to cut off questioning.'"

This argument is unpersuasive. In the context of invoking the *Miranda* right to counsel, the Court in *Davis* v. *United States* held that a suspect must do so "unambiguously." If an accused makes a statement concerning the right to counsel "that is ambiguous or equivocal" or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights.

The Court has not yet stated whether an invocation of the right to remain silent can be ambiguous or equivocal, but there is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel at issue in *Davis.*

There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that "avoid[s] difficulties of proof and . . . provide[s] guidance to officers" on how to proceed in the face of ambiguity. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression "if they guess wrong." Suppression of a voluntary confession in these circumstances would place a significant burden on society's interest in prosecuting criminal activity. Treating an ambiguous or equivocal act, omission, or statement as an invocation of *Miranda* rights "might add marginally to *Miranda*'s goal of dispelling the compulsion inherent in custodial interrogation." But "as *Miranda* holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process." See *Davis*.

Thompkins did not say that he wanted to remain silent or that he did not want to talk with the police. Had he made either of these simple, unambiguous statements, he would have invoked his "'right to cut off questioning.'" *Mosley*. Here he did neither, so he did not invoke his right to remain silent.

B

We next consider whether Thompkins waived his right to remain silent. Even absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused "in fact knowingly and voluntarily waived *[Miranda]* rights" when making the statement. *Butler*. The waiver inquiry "has two distinct dimensions": waiver must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Burbine*.

Some language in *Miranda* could be read to indicate that waivers are difficult to establish absent an explicit written waiver or a formal, express oral statement. *Miranda* said "a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained." ("No effective waiver . . . can be recognized unless specifically made after the *[Miranda]* warnings . . . have been given"). In addition, the *Miranda* Court stated that "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel."

The course of decisions since *Miranda,* informed by the application of *Miranda* warnings in the whole course of law enforcement, demonstrates that waivers can be established even absent formal or express statements of waiver that would be expected in, say, a judicial hearing to determine if a guilty plea has been properly entered. The main purpose of *Miranda* is to ensure that an accused is advised of and understands the right to remain silent and the right to counsel.

One of the first cases to decide the meaning and import of *Miranda* with respect to the question of waiver was *North Carolina v. Butler*. The *Butler* Court, after discussing some of the problems created by the language in *Miranda*, established certain important propositions. *Butler* interpreted the *Miranda* language concerning the "heavy burden" to show waiver in accord with usual principles of determining waiver, which can include waiver implied from all the circumstances. And in a later case, the Court stated that this "heavy burden" is not more than the burden to establish waiver by a preponderance of the evidence. *Colorado* v. *Connelly,* 479 U. S. 157, 168 (1986).

The prosecution therefore does not need to show that a waiver of *Miranda* rights was express. An "implicit waiver" of the "right to remain silent" is sufficient to admit a suspect's statement into evidence. *Butler* made clear that a waiver of *Miranda* rights may be implied through "the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver." The Court in *Butler* therefore "retreated" from the "language and tenor of the *Miranda* opinion," which "suggested that the Court would require that a waiver . . . be 'specifically made.'" *Connecticut* v. *Barrett,* (Brennan, J., concurring in judgment).

If the State establishes that a *Miranda* warning was given and the accused made an uncoerced statement, this showing, standing alone, is insufficient to demonstrate "a valid waiver" of *Miranda* rights. The prosecution must make the additional showing that the accused understood these rights. Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.

Although *Miranda* imposes on the police a rule that is both formalistic and practical when it prevents them from interrogating suspects without first providing them with a *Miranda* warning, it does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights. As a general proposition, the law can presume that an individual who,

with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford.

The record in this case shows that Thompkins waived his right to remain silent. There is no basis in this case to conclude that he did not understand his rights; and on these facts it follows that he chose not to invoke or rely on those rights when he did speak. First, there is no contention that Thompkins did not understand his rights; and from this it follows that he knew what he gave up when he spoke. There was more than enough evidence in the record to conclude that Thompkins understood his *Miranda* rights. Thompkins received a written copy of the *Miranda* warnings; Detective Helgert determined that Thompkins could read and understand English; and Thompkins was given time to read the warnings. Thompkins, furthermore, read aloud the fifth warning, which stated that "you have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned." He was thus aware that his right to remain silent would not dissipate after a certain amount of time and that police would have to honor his right to be silent and his right to counsel during the whole course of interrogation. Those rights, the warning made clear, could be asserted at any time. Helgert, moreover, read the warnings aloud.

Second, Thompkins's answer to Detective Helgert's question about whether Thompkins prayed to God for forgiveness for shooting the victim is a "course of conduct indicating waiver" of the right to remain silent. If Thompkins wanted to remain silent, he could have said nothing in response to Helgert's questions, or he could have unambiguously invoked his *Miranda* rights and ended the interrogation. The fact that Thompkins made a statement about three hours after receiving a *Miranda* warning does not overcome the fact that he engaged in a course of conduct indicating waiver. Police are not required to rewarn suspects from time to time. Thompkins's answer to Helgert's question about praying to God for forgiveness for shooting the victim was sufficient to show a course of conduct indicating waiver. This is confirmed by the fact that before then Thompkins had given sporadic answers to questions throughout the interrogation.

Third, there is no evidence that Thompkins's statement was coerced. Thompkins does not claim that police threatened or injured him during the interrogation or that he was in any way fearful. The interrogation was conducted in a standard-sized room in the middle of the afternoon. It is true that apparently he was in a straight-backed chair for three hours, but there is no authority for the proposition that an interrogation of this length is inherently coercive. Indeed, even where interrogations of greater duration were held to be improper, they were accompanied, as this one was not, by other facts indicating coercion, such as an incapacitated and sedated suspect, sleep and food deprivation, and threats. The fact that Helgert's question referred to Thompkins's religious beliefs also did not render Thompkins's statement involuntary. "[T]he Fifth Amendment privilege is not concerned 'with moral and psychological pressures to confess emanating from sources other than official coercion.'" In these circumstances, Thompkins knowingly and voluntarily made a statement to police, so he waived his right to remain silent.

C

Thompkins next argues that, even if his answer to Detective Helgert could constitute a waiver of his right to remain silent, the police were not allowed to question him until they obtained a waiver first. *Butler* forecloses this argument. The *Butler* Court held that courts can infer a waiver of *Miranda* rights "from the actions and words of the person interrogated." This principle would be inconsistent with a rule that requires a waiver at the outset. The *Butler* Court thus rejected the rule proposed by the *Butler* dissent, which would have "requir[ed] the police to obtain an express waiver of *[Miranda* rights] before proceeding with interrogation." (Brennan, J.,

dissenting). This holding also makes sense given that "the primary protection afforded suspects subject[ed] to custodial interrogation is the *Miranda* warnings themselves." The *Miranda* rule and its requirements are met if a suspect receives adequate *Miranda* warnings, understands them, and has an opportunity to invoke the rights before giving any answers or admissions. Any waiver, express or implied, may be contradicted by an invocation at any time. If the right to counsel or the right to remain silent is invoked at any point during questioning, further interrogation must cease.

Interrogation provides the suspect with additional information that can put his or her decision to waive, or not to invoke, into perspective. As questioning commences and then continues, the suspect has the opportunity to consider the choices he or she faces and to make a more informed decision, either to insist on silence or to cooperate. When the suspect knows that *Miranda* rights can be invoked at any time, he or she has the opportunity to reassess his or her immediate and long-term interests. Cooperation with the police may result in more favorable treatment for the suspect; the apprehension of accomplices; the prevention of continuing injury and fear; beginning steps towards relief or solace for the victims; and the beginning of the suspect's own return to the law and the social order it seeks to protect.

In order for an accused's statement to be admissible at trial, police must have given the accused a *Miranda* warning. If that condition is established, the court can proceed to consider whether there has been an express or implied waiver of *Miranda* rights. In making its ruling on the admissibility of a statement made during custodial questioning, the trial court, of course, considers whether there is evidence to support the conclusion that, from the whole course of questioning, an express or implied waiver has been established. Thus, after giving a *Miranda* warning, police may interrogate a suspect who has neither invoked nor waived his or her *Miranda* rights. On these premises, it follows the police were not required to obtain a waiver of Thompkins's *Miranda* rights before commencing the interrogation.

D

In sum, a suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police. Thompkins did not invoke his right to remain silent and stop the questioning. Understanding his rights in full, he waived his right to remain silent by making a voluntary statement to the police. The police, moreover, were not required to obtain a waiver of Thompkins's right to remain silent before interrogating him. The state court's decision rejecting Thompkins's *Miranda* claim was thus correct under *de novo* review and therefore necessarily reasonable under the more deferential AEDPA standard of review.

* * *

The judgment of the Court of Appeals is reversed, and the case is remanded with instructions to deny the petition.

JUSTICE SOTOMAYOR, with whom JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

The Court concludes today that a criminal suspect waives his right to remain silent if, after sitting tacit and uncommunicative through nearly three hours of police interrogation, he utters a few one-word responses. The Court also concludes that a suspect who wishes to guard his right to remain silent against such a finding of "waiver" must, counterintuitively, speak—and

must do so with sufficient precision to satisfy a clear-statement rule that construes ambiguity in favor of the police. Both propositions mark a substantial retreat from the protection against compelled self-incrimination that *Miranda* has long provided during custodial interrogation. The broad rules the Court announces today are also troubling because they are unnecessary to decide this case, which is governed by the deferential standard of review set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Because I believe Thompkins is entitled to relief under AEDPA on the ground that his statements were admitted at trial without the prosecution having carried its burden to show that he waived his right to remain silent; because longstanding principles of judicial restraint counsel leaving for another day the questions of law the Court reaches out to decide; and because the Court's answers to those questions do not result from a faithful application of our prior decisions, I respectfully dissent.

I

We granted certiorari to review the judgment of the Court of Appeals for the Sixth Circuit, which held that Thompkins was entitled to habeas relief. Thompkins argues first that through his conduct during the 3-hour custodial interrogation he effectively invoked his right to remain silent, requiring police to cut off questioning in accordance with *Miranda* and *Mosley*. Thompkins also contends his statements were in any case inadmissible because the prosecution failed to meet its heavy burden under *Miranda* of proving that he knowingly and intelligently waived his right to remain silent. The Sixth Circuit agreed with Thompkins as to waiver and declined to reach the question of invocation. In my view, even if Thompkins cannot prevail on his invocation claim under AEDPA, he is entitled to relief as to waiver.

The strength of Thompkins' *Miranda* claims depends in large part on the circumstances of the 3-hour interrogation, at the end of which he made inculpatory statements later introduced at trial. The Court's opinion downplays record evidence that Thompkins remained almost completely silent and unresponsive throughout that session. One of the interrogating officers, Detective Helgert, testified that although Thompkins was administered *Miranda* warnings, the last of which he read aloud, Thompkins expressly declined to sign a written acknowledgment that he had been advised of and understood his rights. There is conflicting evidence in the record about whether Thompkins ever verbally confirmed understanding his rights.[14] The record contains no indication that the officers sought or obtained an express waiver.

As to the interrogation itself, Helgert candidly characterized it as "very, very one-sided" and "nearly a monologue." Thompkins was "[p]eculiar," "[s]ullen," and "[g]enerally quiet." Helgert and his partner "did most of the talking," as Thompkins was "not verbally communicative" and "[l]argely" remained silent. To the extent Thompkins gave any response, his answers consisted of "a word or two. A 'yeah,' or a 'no,' or 'I don't know.' . . . And sometimes . . . he simply sat down . . . with [his] head in [his] hands looking down. Sometimes . . . he would look up and make eye-contact would be the only response." After proceeding in this fashion for approximately 2 hours and 45 minutes, Helgert asked Thompkins three questions relating to his faith in God. The prosecution relied at trial on Thompkins' one-word answers of "yes."

14 At the suppression hearing, Detective Helgert testified that after reading Thompkins the warnings, “I believe I asked him if he understood the Rights, and I think I got a verbal answer to that as a ‘yes.’ ” In denying the motion to suppress, the trial court relied on that factual premise. In his later testimony at trial, Helgert remembered the encounter differently. Asked whether Thompkins “indicate[d] that he understood [the warnings]” after they had been read, Helgert stated “I don’t know that I orally asked him that question.” Nevertheless, the Michigan Court of Appeals stated that Thompkins verbally acknowledged understanding his rights.

Thompkins' nonresponsiveness is particularly striking in the context of the officers' interview strategy, later explained as conveying to Thompkins that "this was his opportunity to explain his side [of the story]" because "[e]verybody else, including [his] co-[d]efendants, had given their version," and asking him "[w]ho is going to speak up for you if you don't speak up for yourself?" Yet, Helgert
confirmed that the *"only* thing [Thompkins said] relative to his involvement [in the shooting]" occurred near the end of the interview—*i.e.,* in response to the questions about God. (emphasis added). The only other responses Helgert could remember Thompkins giving were that " '[h]e didn't want a peppermint' " and " 'the chair that he was sitting in was hard.' " Nevertheless, the Michigan court concluded on this record that Thompkins had not invoked his right to remain silent because "he continued to talk with the officer, albeit sporadically," and that he voluntarily waived that right.

Thompkins' federal habeas petition is governed by AEDPA, under which a federal court may not grant the writ unless the state court's adjudication of the merits of the claim at issue "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

The relevant clearly established federal law for purposes of §2254(d)(1) begins with our landmark *Miranda* decision, which "g[a]ve force to the Constitution's protection against compelled self-incrimination" by establishing " 'certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation.'"

Even when warnings have been administered and a suspect has not affirmatively invoked his rights, statements made in custodial interrogation may not be admitted as part of the prosecution's case in chief "unless and until" the prosecution demonstrates that an individual "knowingly and intelligently waive[d] [his] rights." “[A] heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Miranda,* 384 U. S., at 475. The government must satisfy the "high standar[d] of proof for the waiver of constitutional rights [set forth in] *Johnson* v. *Zerbst,* 304 U. S. 458 (1938)."

The question whether a suspect has validly waived his right is "entirely distinct" as a matter of law from whether he invoked that right. *Smith* v. *Illinois,* 469 U. S. 91, 98 (1984) *(per curiam).* The questions are related, however, in terms of the practical effect on the exercise of a suspect's rights. A suspect may at any time revoke his prior waiver of rights—or, closer to the facts of this case, guard against the possibility of a future finding that he implicitly waived his rights—by invoking the rights and thereby requiring the police to cease questioning.

A

Like the Sixth Circuit, I begin with the question whether Thompkins waived his right to remain silent. Even if Thompkins did not invoke that right, he is entitled to relief because Michigan did not satisfy its burden of establishing waiver.

Miranda's discussion of the prosecution's burden in proving waiver speaks with particular clarity to the facts of this case and therefore merits reproducing at length:

> "If [an] interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. . . . Since the State is responsible for

> establishing the isolated circumstances under which [an] interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders."
>
> "An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained." *Miranda* went further in describing the facts likely to satisfy the prosecution's burden of establishing the admissibility of statements obtained after a lengthy interrogation:
>
> "Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. In these circumstances the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so. It is inconsistent with any notion of a voluntary relinquishment of the privilege."

This Court's decisions subsequent to *Miranda* have emphasized the prosecution's "heavy burden" in proving waiver. See, *e.g., Tague* v. *Louisiana*. We have also reaffirmed that a court may not presume waiver from a suspect's silence or from the mere fact that a confession was eventually obtained. See *North Carolina v. Butler*.

Even in concluding that *Miranda* does not invariably require an express waiver of the right to silence or the right to counsel, this Court in *Butler* made clear that the prosecution bears a substantial burden in establishing an implied waiver. The Federal Bureau of Investigation had obtained statements after advising Butler of his rights and confirming that he understood them. When presented with a written waiver-of-rights form, Butler told the agents, "'I will talk to you but I am not signing any form.'" He then made inculpatory statements, which he later sought to suppress on the ground that he had not expressly waived his right to counsel.

Although this Court reversed the state-court judgment concluding that the statements were inadmissible, we quoted at length portions of the *Miranda* opinion reproduced above. We cautioned that even an "express written or oral statement of waiver of the right to remain silent or of the right to counsel" is not "inevitably . . . sufficient to establish waiver," emphasizing that "[t]he question is . . .whether the defendant in fact knowingly and voluntarily waived the rights delineated in the *Miranda* case." *Miranda,* we observed, "unequivocally said . . . mere silence is not enough."While we stopped short in *Butler* of announcing a *per se* rule that "the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver, may never support a conclusion that a defendant has waived his rights," we reiterated that "courts must presume that a defendant did not waive his rights; the prosecution's burden is great."[15]

Rarely do this Court's precedents provide clearly established law so closely on point with the facts of a particular case. Together, *Miranda* and *Butler* establish that a court "must presume

15 The Court cites *Colorado v. Connelly*, 479 U. S. 157, 168 (1986), for the proposition that the prosecution's " 'heavy burden' " under Miranda "is not more than the burden to establish waiver by a preponderance of the evidence." Connelly did reject a clear and convincing evidence standard of proof in favor of a preponderance burden. But nothing in Connelly displaced the core presumption against finding a waiver of rights, and we have subsequently relied on Miranda's characterization of the prosecution's burden as "heavy." *See Arizona v. Roberson*, 486 U. S. 675, 680 (1988).

that a defendant did not waive his right[s]"; the prosecution bears a "heavy burden" in attempting to demonstrate waiver; the fact of a "lengthy interrogation" prior to obtaining statements is "strong evidence" against a finding of valid waiver; "mere silence" in response to questioning is "not enough"; and waiver may not be presumed "simply from the fact that a confession was in fact eventually obtained."

It is undisputed here that Thompkins never expressly waived his right to remain silent. His refusal to sign even an acknowledgment that he understood his *Miranda* rights evinces, if anything, an intent not to waive those rights. That Thompkins did not make the inculpatory statements at issue until after approximately 2 hours and 45 minutes of interrogation serves as "strong evidence" against waiver. *Miranda* and *Butler* expressly preclude the possibility that the inculpatory statements themselves are sufficient to establish waiver.

In these circumstances, Thompkins' "actions and words" preceding the inculpatory statements simply do not evidence a "course of conduct indicating waiver" sufficient to carry the prosecution's burden.[16] Unlike in *Butler,* Thompkins made no initial declaration akin to "I will talk to you." (case below) (noting that the case might be different if the record showed Thompkins had responded affirmatively to an invitation to tell his side of the story or described any particular question that Thompkins answered). Indeed, Michigan and the United States concede that no waiver occurred in this case until Thompkins responded "yes" to the questions about God. I believe it is objectively unreasonable under our clearly established precedents to conclude the prosecution met its "heavy burden" of proof on a record consisting of three one-word answers, following 2 hours and 45 minutes of silence punctuated by a few largely nonverbal responses to unidentified questions.

B

Perhaps because our prior *Miranda* precedents so clearly favor Thompkins, the Court today goes beyond AEDPA's deferential standard of review and announces a new general principle of law. Any new rule, it must be emphasized, is unnecessary to the disposition of this case. If, in the Court's view, the Michigan court did not unreasonably apply our *Miranda* precedents in denying Thompkins relief, it should simply say so and reverse the Sixth Circuit's judgment on that ground. "It is a fundamental rule of judicial restraint . . . that this Court will not reach constitutional questions in advance of the necessity of deciding them." *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.,* 467 U. S. 138, 157 (1984).

The Court concludes that when *Miranda* warnings have been given and understood, "an accused's uncoerced statement establishes an implied waiver of the right to remain silent." More broadly still, the Court states that, "[a]s a general proposition, the law can presume that an

16 Although such decisions are not controlling under AEDPA, it is notable that lower courts have similarly required a showing of words or conduct beyond inculpatory statements. *See*, e.g., *United States v. Wallace* (no implied waiver when warned suspect “maintained her silence for … perhap[s] as many as ten minutes” before answering a question); *McDonald v. Lucas*, 677 F. 2d 518, 521–522 (CA5 1982) (no implied waiver when defendant refused to sign waiver and there was “no evidence of words or actions implying a waiver, except the [inculpatory] statement”). Generally, courts have found implied waiver when a warned suspect has made incriminating statements “as part of a steady stream of speech or as part of a back-and-forth conversation with the police,” or when a warned suspect who previously invoked his right “spontaneously recommences the dialogue with his interviewers.” *Bui v. DiPaolo*; *see* also *United States v. Smith*, 218 F. 3d 777, 781 (CA7 2000) (implied waiver where suspect “immediately began talking to the agents after refusing to sign the waiver form and continued to do so for an hour”); *United States v. Scarpa*, (implied waiver where warned suspect engaged in a “ ‘relaxed and friendly’ ” conversation with officers during a 2-hour drive).

individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford."

These principles flatly contradict our longstanding views that "a valid waiver will not be presumed . . . simply from the fact that a confession was in fact eventually obtained," *Miranda,* and that "[t]he courts must presume that a defendant did not waive his rights," *Butler.* Indeed, we have in the past summarily reversed a state-court decision that inverted *Miranda*'s antiwaiver presumption, characterizing the error as "readily apparent." *Tague*. At best, the Court today creates an unworkable and conflicting set of presumptions that will undermine *Miranda's* goal of providing "concrete constitutional guidelines for law enforcement agencies and courts to follow," At worst, it overrules *sub silentio* an essential aspect of the protections *Miranda* has long provided for the constitutional guarantee against self-incrimination.

The Court's conclusion that Thompkins' inculpatory statements were sufficient to establish an implied waiver, finds no support in *Butler. Butler* itself distinguished between a sufficient "course of conduct" and inculpatory statements, reiterating *Miranda*'s admonition that "'a valid waiver will not be presumed simply from . . . the fact that a confession was in fact eventually obtained.' " Michigan suggests Butler's silence "'when advised of his right to the assistance of a lawyer,'" combined with our remand for the state court to apply the implied-waiver standard, shows that silence followed by statements can be a " 'course of conduct.' " But the evidence of implied waiver in *Butler* was worlds apart from the evidence in this case, because Butler unequivocally said "I will talk to you" after having been read *Miranda* warnings. Thompkins, of course, made no such statement.

Today's decision thus ignores the important interests *Miranda* safeguards. The underlying constitutional guarantee against self-incrimination reflects "many of our fundamental values and most noble aspirations," our society's "preference for an accusatorial rather than an inquisitorial system of criminal justice"; a "fear that self-incriminating statements will be elicited by inhumane treatment and abuses" and a resulting "distrust of self-deprecatory statements"; and a realization that while the privilege is "sometimes a shelter to the guilty, [it] is often a protection to the innocent." For these reasons, we have observed, a criminal law system "which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system relying on independent investigation." "By bracing against 'the possibility of unreliable statements in every instance of in-custody interrogation,'" *Miranda's* prophylactic rules serve to "'protect the fairness of the trial itself.'" Today's decision bodes poorly for the fundamental principles that *Miranda* protects.

III

Because this Court has never decided whether *Davis'* clear-statement rule applies to an invocation of the right to silence, Michigan contends, there was no clearly established federal law prohibiting the state court from requiring an unambiguous invocation. That the state court's decision was not objectively unreasonable is confirmed, in Michigan's view, by the number of federal Courts of Appeals to have applied *Davis* to invocation of the right to silence.

Under AEDPA's deferential standard of review, it is indeed difficult to conclude that the state court's application of our precedents was objectively unreasonable. Although the duration and consistency of Thompkins' refusal to answer questions throughout the 3-hour interrogation provide substantial evidence in support of his claim, Thompkins did not remain absolutely silent, and this Court has not previously addressed whether a suspect can invoke the right to silence by remaining uncooperative and nearly silent for 2 hours and 45 minutes.

B

The Court, however, eschews this narrow ground of decision, instead extending *Davis* to hold that police may continue questioning a suspect until he unambiguously invokes his right to remain silent. Because Thompkins neither said "he wanted to remain silent" nor said "he did not want to talk with the police," the Court concludes, he did not clearly invoke his right to silence.[6]

I disagree with this novel application of *Davis.* Neither the rationale nor holding of that case compels today's result. *Davis* involved the right to counsel, not the right to silence. The Court in *Davis* reasoned that extending *Edwards'* "rigid" prophylactic rule to ambiguous requests for a lawyer would transform *Miranda* into a "'wholly irrational obstacl[e] to legitimate police investigative activity'" by "needlessly prevent[ing] the police from questioning a suspect in the absence of counsel even if [he] did not wish to have a lawyer present." But *Miranda* itself "distinguished between the procedural safeguards triggered by a request to remain silent and a request for an attorney." *Mosley, Edwards*. *Mosley* upheld the admission of statements when police immediately stopped interrogating a suspect who invoked his right to silence, but reapproached him after a 2-hour delay and obtained inculpatory responses relating to a different crime after administering fresh *Miranda* warnings. The different effects of invoking the rights are consistent with distinct standards for invocation. To the extent *Mosley* contemplates a more flexible form of prophylaxis than *Edwards*— and, in particular,
does not categorically bar police from reapproaching a suspect who has invoked his right to remain silent—*Davis* concern about "'wholly irrational obstacles'" to police investigation applies with less
force.

In addition, the suspect's equivocal reference to a lawyer in *Davis* occurred only *after* he had given express oral and written waivers of his rights. *Davis'* holding is explicitly predicated on that fact. ("We therefore hold that, after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney"). The Court ignores this aspect of *Davis,* as well as the decisions of numerous federal and state courts declining to apply a clear-statement rule when a suspect has not previously given an express waiver of rights.

In my mind, a more appropriate standard for addressing a suspect's ambiguous invocation of the right to remain silent is the constraint *Mosley* places on questioning a suspect who has invoked that right: The suspect's "'right to cut off questioning'" must be " 'scrupulously honored.' " Such a standard is necessarily precautionary and fact specific. The rule would acknowledge that some statements or conduct are so equivocal that police may scrupulously honor a suspect's rights without terminating questioning—for instance, if a suspect's actions are reasonably understood to indicate a willingness to listen before deciding whether to respond. But other statements or actions—in particular, when a suspect sits silent throughout prolonged interrogation, long past the point when he could be deciding whether to respond—cannot reasonably be understood other than as an invocation of the right to remain silent. Under such circumstances, "scrupulous" respect for the suspect's rights will require police to terminate questioning under *Mosley.17*

17 Indeed, this rule appears to reflect widespread contemporary police practice. Thompkins' amici collect a range of training materials that instruct police not to engage in prolonged interrogation after a suspect has failed to respond to initial questioning. One widely used police manual, for example, teaches that a suspect who "indicates," "even by silence itself," his unwillingness to answer questions "has obviously exercised his constitutional privilege against self-incrimination."

To be sure, such a standard does not provide police with a bright-line rule. But, as we have previously recognized, *Mosley* itself does not offer clear guidance to police about when and how interrogation may continue after a suspect invokes his rights. Given that police have for nearly 35 years applied *Mosley*'s fact-specific standard in questioning suspects who have invoked their right to remain silent; that our cases did not during that time resolve what statements or actions suffice to invoke that right; and that neither Michigan nor the Solicitor General have provided evidence in this case that the status quo has proved unworkable, I see little reason to believe today's clear-statement rule is necessary to ensure effective law enforcement.

Davis' clear-statement rule is also a poor fit for the right to silence. Advising a suspect that he has a "right to remain silent" is unlikely to convey that he must speak (and must do so in some particular fashion) to ensure the right will be protected. Cf. *Soffar* v. *Cockrell,* 300 F. 3d 588, 603 (CA5 2002) (en banc) (DeMoss, J., dissenting) ("What in the world must an individual do to exercise his constitutional right to remain silent beyond actually, in fact, remaining silent?"). By contrast, tellinga suspect "he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires," implies the need for speech to exercise that right. *Davis* requirement that a suspect must "clearly reques[t] an attorney" to terminate questioning thus aligns with a suspect's likely understanding of the *Miranda* warnings in a way today's rule does not.

The Court suggests Thompkins could have employed the "simple, unambiguous" means of saying "he wanted to remain silent" or "did not want to talk with the police." But the *Miranda* warnings give no hint that a suspect should use those magic words, and there is little reason to believe police—who have ample incentives to avoid invocation—will provide such guidance. Conversely, the Court's concern that police will face "difficult decisions about an accused's unclear intent" and suffer the consequences of "'guess[ing] wrong'" is misplaced. If a suspect makes an ambiguous statement or engages in conduct that creates uncertainty about his intent to invoke his right, police can simply ask for clarification. It is hardly an unreasonable burden for police to ask a suspect, for instance, "Do you want to talk to us?" The majority in *Davis i*tself approved of this approach as protecting suspects' rights while "minimiz[ing] the chance of a confession [later] being suppressed." Given this straightforward mechanism by which police can "scrupulously hono[r]" a suspect's right to silence, today's clear-statement rule can only be seen as accepting "as tolerable the certainty that some poorly expressed requests [to remain silent] will be disregarded," without any countervailing benefit. Police may well prefer not to seek clarification of an ambiguous statement out of fear that a suspect will invoke his rights. But "our system of justice is not founded on a fear that a suspect will exercise his rights. "'If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.'" *Escobedo* v. *Illinois*.

The Court asserts in passing that treating ambiguous statements or acts as an invocation of the right to silence will only "'marginally'" serve *Miranda*'s goals. Experience suggests the contrary. In the 16 years since *Davis* was decided, ample evidence has accrued that criminal suspects often use equivocal or colloquial language in attempting to invoke their right to silence. A number of lower courts that have (erroneously, in my view) imposed a clear-statement requirement for invocation of the right to silence have rejected as ambiguous an array of statements whose meaning might otherwise be thought plain. At a minimum, these decisions suggest that differentiating "clear" from "ambiguous" statements is often a subjective inquiry. Even if some of the cited decisions are themselves in tension with *Davis* admonition that a suspect need not "'speak with the discrimination of an Oxford don'" to invoke his rights, they

demonstrate that today's decision will significantly burden the exercise of the right to silence. Notably, when a suspect "understands his (expressed) wishes to have been ignored . . . in contravention of the 'rights' just read to him by his interrogator, he may well see further objection as futile and confession (true or not) as the only way to end his interrogation." For these reasons, I believe a precautionary requirement that police "scrupulously hono[r]" a suspect's right to cut off questioning is a more faithful application of our precedents than the Court's awkward and needless extension of *Davis.*

***

Today's decision turns Miranda upside down. Criminal suspects must now unambiguously invoke their right to remain silent—which, counterintuitively, requires them to speak. At the same time, suspects will be legally presumed to have waived their rights even if they have given no clear expression of their intent to do so. Those results, in my view, find no basis in *Miranda* or our subsequent cases and are inconsistent with the fair-trial principles on which those precedents are grounded. Today's broad new rules are all the more unfortunate because they are unnecessary to the disposition of the case before us. I respectfully dissent.

Question and Notes

1. Is *Thompkins* about invocation of the right to silence or waiver of the right to silence? Is there a difference? What would Kennedy say? What would Sotomayor say?

2. On what basis does the majority conclude that *Thompkins* waived his right to remain silent? Do you agree? Explain.
3. Does *Thompkins* change the law of waiver? Is so, how?

4. Do you believe that *Thompkins* intended to waive his right to remain silent? Or was his will overborne by police that didn't take his right to remain silent seriously? Explain.

5. Is it counterintuitive to expect a suspect to speak when he wishes to remain silent?

6. Is Davis distinguishable in any meaningful way?

7. Is *Thompkins* consistent with *Miranda*?

8. Is the burden of proving waiver (heavy or otherwise) still on the State?

Insert p. 779 (Replace ALVARADO problem)

J.D.B. v. NORTH CAROLINA
564 U.S. ____ (2011)

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This case presents the question whether the age of a child subjected to police questioning is relevant to the custody analysis of Miranda v. Arizona. It is beyond dispute that children will

often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the Miranda custody analysis.

I

A

Petitioner J. D. B. was a 13-year-old, seventh-grade student attending class at Smith Middle School in Chapel Hill, North Carolina when he was removed from his classroom by a uniformed police officer, escorted to a closed-door conference room, and questioned by police for at least half an hour. This was the second time that police questioned J. D. B. in the span of a week. Five days earlier, two home break-ins occurred, and various items were stolen. Police stopped and questioned J. D. B. after he was seen behind a residence in the neighborhood where the crimes occurred. That same day, police also spoke to J. D. B.'s grandmother—his legal guardian—as well as his aunt.

Police later learned that a digital camera matching the description of one of the stolen items had been found at J. D. B.'s middle school and seen in J. D. B.'s possession. Investigator DiCostanzo, the juvenile investigator with the local police force who had been assigned to the case, went to the school to question J. D. B. Upon arrival, DiCostanzo informed the uniformed police officer on detail to the school (a so-called school resource officer), the assistant principal, and an administrative intern that he was there to question J. D. B. about the break-ins. Although DiCostanzo asked the school administrators to verify J. D. B.'s date of birth, address, and parent contact information from school records, neither the police officers nor the school administrators contacted J. D. B.'s grandmother.

The uniformed officer interrupted J. D. B.'s afternoon social studies class, removed J. D. B. from the classroom, and escorted him to a school conference room.[18] There, J. D. B. was met by DiCostanzo, the assistant principal, and the administrative intern. The door to the conference room was closed. With the two police officers and the two administrators present, J. D. B. was questioned for the next 30 to 45 minutes. Prior to the commencement of questioning, J. D. B. was given neither Miranda warnings nor the opportunity to speak to his grandmother. Nor was he informed that he was free to leave the room.

Questioning began with small talk—discussion of sports and J. D. B.'s family life. DiCostanzo asked, and J. D. B. agreed, to discuss the events of the prior weekend. Denying any wrongdoing, J. D. B. explained that he had been in the neighborhood where the crimes occurred because he was seeking work mowing lawns. DiCostanzo pressed J. D. B. for additional detail about his efforts to obtain work; asked J. D. B. to explain a prior incident, when one of the victims returned home to find J. D. B. behind her house; and confronted J. D. B. with the stolen camera. The assistant principal urged J. D. B. to "do the right thing," warning J. D. B. that "the truth always comes out in the end."

Eventually, J. D. B. asked whether he would "still be in trouble" if he returned the "stuff." In response, DiCostanzo explained that return of the stolen items would be helpful, but "this thing is going to court" regardless. ("[W]hat's done is done[;] now you need to help yourself by making it right").. DiCostanzo then warned that he may need to seek a secure custody order if he believed that J. D. B. would continue to break into other homes. When J. D. B. asked what a secure custody order was, DiCostanzo explained that "it's where you get sent to juvenile

18 Although the State suggests that the "record is unclear as to who brought J. D. B. to the conference room, and the trial court made no factual findings on this specific point," the State agreed at the certiorari stage that "the SRO [school resource officer] escorted petitioner" to the room.

detention before court."

A

After learning of the prospect of juvenile detention, J. D. B. confessed that he and a friend were responsible for the break-ins. DiCostanzo only then informed J. D. B. that he could refuse to answer the investigator's questions and that he was free to leave.[19] Asked whether he understood, J. D. B. nodded and provided further detail, including information about the location of the stolen items. Eventually J. D. B. wrote a statement, at DiCostanzo's request. When the bell rang indicating the end of the school day, J. D. B. was allowed to leave to catch the bus home.

B

Two juvenile petitions were filed against J. D. B., each alleging one count of breaking and entering and one count of larceny. J. D. B.'s public defender moved to suppress his statements and the evidence derived therefrom, arguing that suppression was necessary because J. D. B. had been "interrogated by police in a custodial setting without being afforded Miranda warning[s]," and because his statements were involuntary under the totality of the circumstances test, see *Schneckloth v. Bustamonte* (due process precludes admission of a confession where "a defendant's will was overborne" by the circumstances of the interrogation). After a suppression hearing at which DiCostanzo and J. D. B. testified, the trial court denied the motion, deciding that J. D. B. was not in custody at the time of the schoolhouse interrogation and that his statements were voluntary. As a result, J. D. B. entered a transcript of admission to all four counts, renewing his objection to the denial of his motion to suppress, and the court adjudicated J. D. B. delinquent.

A divided panel of the North Carolina Court of Appeals affirmed. The North Carolina Supreme Court held, over two dissents, that J. D. B. was not in custody when he confessed, "declin[ing] to extend the test for custody to include consideration of the age . . . of an individual subjected to questioning by police."[20]

We granted certiorari to determine whether the Miranda custody analysis includes consideration of a juvenile suspect's age.

II

A

Any police interview of an individual suspected of a crime has "coercive aspects to it." Mathiason. Only those inter-rogations that occur while a suspect is in police custody, however, "heighte[n] the risk" that statements obtained are not the product of the suspect's free choice.

By its very nature, custodial police interrogation entails "inherently compelling pressures." *Miranda*. Even for an adult, the physical and psychological isolation of custodial

19 The North Carolina Supreme Court noted that the trial court’s factual findings were “uncontested and therefore . . . binding” on it. *In re J. D. B.*, 363 N. C. 664, 668, 686 S. E. 2d 135, 137 (2009). The court described the sequence of events set forth in the text. (“Immediately following J. D. B.’s initial confession, Investigator DiCostanzo informed J. D. B. that he did not have to speak with him and that he was free to leave” (internal quotation marks and alterations omitted)). Though less than perfectly explicit, the trial court’s order indicates a finding that J. D. B. initially confessed prior to DiCostanzo’s warnings. Nonetheless, both parties’ submissions to this Court suggest that the warnings came after DiCostanzo raised the possibility of a secure custody order but before J. D. B. confessed for the first time. Because we remand for a determination whether J. D. B. was in custody under the proper analysis, the state courts remain free to revisit whether the trial court made a conclusive finding of fact in this respect.

20 J. D. B.’s challenge in the North Carolina Supreme Court focused on the lower courts’ conclusion that he was not in custody for purposes of *Miranda v. Arizona*, 384 U. S. 436 (1966) . The North Carolina Supreme Court did not address the trial court’s holding that the statements were voluntary, and that question is not before us.

interrogation can "undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely." Indeed, the pressure of custodial interrogation is so immense that it "can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States*. That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.

Recognizing that the inherently coercive nature of custodial interrogation "blurs the line between voluntary and involuntary statements," this Court in Miranda adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination. Prior to questioning, a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."

Because these measures protect the individual against the coercive nature of custodial interrogation, they are required "'only where there has been such a restriction on a person's freedom as to render him "in custody." As we have repeatedly emphasized, whether a suspect is "in custody" is an objective inquiry.

"Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest."

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 affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave. On the other hand, the "subjective views harbored by either the interrogating officers or the person being questioned" are irrelevant. The test, in other words, involves no consideration of the "actual mindset" of the particular suspect subjected to police questioning.

The benefit of the objective custody analysis is that it is "designed to give clear guidance to the police. Police must make in-the-moment judgments as to when to administer Miranda warnings. By limiting analysis to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave, the objective test avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind

B

The State and its amici contend that a child's age has no place in the custody analysis, no matter how young the child subjected to police questioning. We cannot agree. In some circumstances, a child's age "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave." That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis.

A child's age is far "more than a chronological fact." It is a fact that "generates common-sense conclusions about behavior and perception." Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police

officer or judge.

Time and again, this Court has drawn these common-sense conclusions for itself. We have observed that children "generally are less mature and responsible than adults," that they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird*, 443 U. S. 622, 635 (1979); that they "are more vulnerable or susceptible to . . . outside pressures" than adults. Addressing the specific context of police interrogation, we have observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." Describing no one child in particular, these observations restate what "any parent knows"—indeed, what any person knows—about children generally.[21]

Our various statements to this effect are far from unique. The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Like this Court's own
generalizations, the legal disqualifications placed on children as a class—e.g., limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.[22]

Indeed, even where a "reasonable person" standard otherwise applies, the common law has reflected the reality that children are not adults. In negligence suits, for instance, where liability turns on what an objectively reasonable person would do in the circumstances, "[a]ll American jurisdictions accept the idea that a person's childhood is a relevant circumstance" to be considered.

In fact, in many cases involving juvenile suspects, the custody analysis would be nonsensical absent some consideration of the suspect's age. This case is a prime example. Were the court precluded from taking J. D. B.'s youth into account, it would be forced to evaluate the circumstances present here through the eyes of a reasonable person of average years. In other words, how would a reasonable adult understand his situation, after being removed from a seventh-grade social studies class by a uniformed school resource officer; being encouraged by his assistant principal to "do the right thing"; and being warned by a police investigator of the prospect of juvenile detention and separation from his guardian and primary caretaker? To describe such an inquiry is to demonstrate its absurdity. Neither officers nor courts can

21 Although citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions, the literature confirms what experience bears out. *See*, e.g., *Graham v. Florida* ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds").

22 ("Common law courts early announced the prevailing view that a minor's contract is 'voidable' at the instance of the minor" (citing 8 W. Holdsworth, History of English Law 51 (1926))); 1 D. Kramer, Legal Rights of Children §8.1, p. 663 (rev. 2d ed. 2005) ("[W]hile minor children have the right to acquire and own property, they are considered incapable of property management" (footnote omitted)); 2 J. Kent, Commentaries on American Law (G. Comstock ed., 11th ed. 1867); (explaining that, under the common law, "[t]he necessity of guardians results from the inability of infants to take care of themselves . . . and this inability continues, in contemplation of law, until the infant has attained the age of [21]"); 1 Blackstone *465 ("It is generally true, that an infant can neither aliene his lands, nor do any legal act, nor make a deed, nor indeed any manner of contract, that will bind him"); *Roper v. Simmons*, 543 U. S. 551, 569 (2005) ("In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent").

reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.

Indeed, although the dissent suggests that concerns "regarding the application of the Miranda custody rule to minors can be accommodated by considering the unique circumstances present when minors are questioned in school," (opinion of ALITO, J.), the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person "questioned in school" is a "minor," the coercive effect of the schoolhouse setting is unknowable.

Our prior decision in Alvarado in no way undermines these conclusions. In that case, we held that a state-court decision that failed to mention a 17-year-old's age as part of the Miranda custody analysis was not objectively unreasonable under the deferential standard of review set forth by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),. Like the North Carolina Supreme Court here, we observed that accounting for a juvenile's age in the Miranda custody analysis "could be viewed as creating a subjective inquiry." We said nothing, however, of whether such a view would be correct under the law. ("[W]hether the [state court] was right or wrong is not the pertinent question under AEDPA"). To the contrary, Justice O'Connor's concurring opinion explained that a suspect's age may indeed "be relevant to the 'custody' inquiry." *Alvarado*.

Reviewing the question de novo today, we hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test.[23] This is not to say that a child's age will be a determinative, or even a significant, factor in every case. *Alvarado*. (O'Connor, J., concurring) (explaining that a state-court decision omitting any mention of the defendant's age was not unreasonable under AEDPA's deferential standard of review where the defendant "was almost 18 years old at the time of his interview") (suggesting that "teenagers nearing the age of majority" are likely to react to an interrogation as would a "typical 18-year-old in similar circumstances"). It is, however, a reality that courts cannot simply ignore.

III

The State and its amici offer numerous reasons that courts must blind themselves to a juvenile defendant's age. None is persuasive.

To start, the State contends that a child's age must be excluded from the custody inquiry because age is a personal characteristic specific to the suspect himself rather than an "external" circumstance of the interrogation. Despite the supposed significance of this distinction, however, at oral argument counsel for the State suggested without hesitation that at least some undeniably personal characteristics—for in-stance, whether the individual being questioned is blind— are

23 This approach does not undermine the basic principle that an interrogating officer's unarticulated, internal thoughts are never—in and of themselves—objective circumstances of an interrogation. *Stansbury v. California*, 511 U. S. 318, 323 (1994) (per curiam). Unlike a child's youth, an officer's purely internal thoughts have no conceivable effect on how a reasonable person in the suspect's position would understand his freedom of action. *See id*., at 323–325; *Berkemer v. McCarty*, 468 U. S. 420, 442 (1984). Rather than "overtur[n]" that settled principle, post, at 13, the limitation that a child's age may inform the custody analysis only when known or knowable simply reflects our unwillingness to require officers to "make guesses" as to circumstances "unknowable" to them in deciding when to give Miranda warnings, *Berkemer*, 468 U. S., at 430–431.

circumstances relevant to the custody analysis. Thus, the State's quarrel cannot be that age is a personal characteristic, without more.[24]

The State further argues that age is irrelevant to the custody analysis because it "go[es] to how a suspect may internalize and perceive the circumstances of an interrogation." But the same can be said of every objective circumstance that the State agrees is relevant to the custody analysis: Each circumstance goes to how a reasonable person would "internalize and perceive" every other. Indeed, this is the very reason that we ask whether the objective circumstances "add up to custody," instead of evaluating the circumstances one by one.

In the same vein, the State and its amici protest that the "effect of . . . age on [the] perception of custody is internal,", or "psychological," But the whole point of the custody analysis is to determine whether, given the circumstances, "a reasonable person [would] have felt he or she was . . . at liberty to terminate the interrogation and leave." Because the Miranda custody inquiry turns on the mindset of a reasonable person in the suspect's position, it cannot be the case that a circumstance is subjective simply because it has an "internal" or "psychological" impact on perception. Were that so, there would be no objective circumstances to consider at all.

Relying on our statements that the objective custody test is "designed to give clear guidance to the police," Alvarado, the State next argues that a child's age must be excluded from the analysis in order to preserve clarity. Similarly, the dissent insists that the clarity of the custody analysis will be destroyed unless a "one-size-fits-all reasonable-person test" applies In reality, however, ignoring a juvenile defendant's age will often make the inquiry more artificial, and thus only add confusion.

And in any event, a child's age, when known or apparent, is hardly an obscure factor to assess. Though the State and the dissent worry about gradations among children of different ages, that concern cannot justify ignoring a child's age altogether. Just as police officers are competent to account for other objective circumstances that are a matter of degree such as the length of questioning or the number of officers present, so too are they competent to evaluate the effect of relative age. Indeed, they are competent to do so even though an interrogation room lacks the "reflective atmosphere of a [jury] deliberation room." The same is true of judges, including those whose childhoods have long since passed. In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.

There is, however, an even more fundamental flaw with the State's plea for clarity and the dissent's singular focus on simplifying the analysis: Not once have we excluded from the custody analysis a circumstance that we determined was relevant and objective, simply to make the fault line between custodial and noncustodial "brighter." Indeed, were the guiding concern clarity and nothing else, the custody test would presumably ask only whether the suspect had been placed under formal arrest. *Berkemer*. (acknowledging the "occasiona[l] . . . difficulty" police officers confront in determining when a suspect has been taken into custody). But we have rejected that "more easily administered line," recognizing that it would simply "enable the police to

24 The State's purported distinction between blindness and age—that taking account of a suspect's youth requires a court "to get into the mind" of the child, whereas taking account of a suspect's blindness does not—is mistaken. In either case, the question becomes how a reasonable person would understand the circumstances, either from the perspective of a blind person or, as here, a 13-year-old child.

circumvent the constraints on custodial interrogations established by Miranda."[25]

Finally, the State and the dissent suggest that excluding age from the custody analysis comes at no cost to juveniles' constitutional rights because the due process voluntariness test independently accounts for a child's youth. To be sure, that test permits consideration of a child's age, and it erects its own barrier to admission of a defendant's inculpatory statements at trial. But Miranda's procedural safeguards exist precisely because the voluntariness test is an inadequate barrier when custodial interrogation is at stake. ("Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice ("[R]eliance on the traditional totality-of-the-circumstances test raise[s] a risk of overlooking an involuntary custodial confession"); To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that Miranda guarantees to adults.

The question remains whether J. D. B. was in custody when police interrogated him. We remand for the state courts to address that question, this time taking account of all of the relevant circumstances of the interrogation, including J. D. B.'s age at the time. The judgment of the North Carolina Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting.

The Court's decision in this case may seem on first consideration to be modest and sensible, but in truth it is neither. It is fundamentally inconsistent with one of the main justifications for the Miranda rule: the perceived need for a clear rule that can be easily applied in all cases. And today's holding is not needed to protect the constitutional rights of minors who are questioned by the police.

Miranda's prophylactic regime places a high value on clarity and certainty. Dissatisfied with the highly fact-specific constitutional rule against the admission of involuntary confessions, the Miranda Court set down rigid standards that often require courts to ignore personal characteristics that may be highly relevant to a particular suspect's actual susceptibility to police pressure. This rigidity, however, has brought with it one of Miranda's principal strengths—"the ease and clarity of its application" by law enforcement officials and courts. A key contributor to this clarity, at least up until now, has been Mirandas objective reasonable-person test for

25 Contrary to the dissent's intimation, *Miranda* does not answer the question whether a child's age is an objective circumstance relevant to the custody analysis. *Miranda* simply holds that warnings must be given once a suspect is in custody, without "paus[ing] to inquire in individual cases whether the defendant was aware of his rights without a warning being given." 384 U. S., at 468; *see* also *id*., at 468–469 ("Assessments of the knowledge the defendant possessed, based on information as to age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact"). That conclusion says nothing about whether age properly informs whether a child is in custody in the first place.

determining custody.

Mirandas custody requirement is based on the proposition that the risk of unconstitutional coercion is heightened when a suspect is placed under formal arrest or is subjected to some functionally equivalent limitation on freedom of movement. When this custodial threshold is reached, Miranda warnings must precede police questioning. But in the interest of simplicity, the custody analysis considers only whether, under the circumstances, a hypothetical reasonable person would consider himself to be confined.

Many suspects, of course, will differ from this hypothetical reasonable person. Some, including those who have been hardened by past interrogations, may have no need for Miranda warnings at all. And for other suspects— those who are unusually sensitive to the pressures of police questioning—Miranda warnings may come too late to be of any use. That is a necessary consequence of Miranda's rigid standards, but it does not mean that the constitutional rights of these especially sensitive suspects are left unprotected. A vulnerable defendant can still turn to the constitutional rule against actual coercion and contend that that his confession was extracted against his will.

Today's decision shifts the Miranda custody determination from a one-size-fits-all reasonable-person test into an inquiry that must account for at least one individualized characteristic—age—that is thought to correlate with susceptibility to coercive pressures. Age, however, is in no way the only personal characteristic that may correlate with pliability, and in future cases the Court will be forced to choose between two unpalatable alternatives. It may choose to limit today's decision by arbitrarily distinguishing a suspect's age from other personal characteristics— such as intelligence, education, occupation, or prior experience with law enforcement—that may also correlate with susceptibility to coercive pressures. Or, if the Court is unwilling to draw these arbitrary lines, it will be forced to effect a fundamental transformation of the Miranda custody test—from a clear, easily applied prophylactic rule into a highly fact-intensive standard resembling the voluntariness test that the Miranda Court found to be unsatisfactory.

For at least three reasons, there is no need to go down this road. First, many minors subjected to police interrogation are near the age of majority, and for these suspects the one-size-fits-all Miranda custody rule may not be a bad fit. Second, many of the difficulties in applying the Miranda custody rule to minors arise because of the unique circumstances present when the police conduct interrogations at school. The Miranda custody rule has always taken into account the setting in which questioning occurs, and accounting for the school setting in such cases will address many of these problems. Third, in cases like the one now before us, where the suspect is especially young, courts applying the constitutional voluntariness standard can take special care to ensure that incriminating statements were not obtained through coercion.

Safeguarding the constitutional rights of minors does not require the extreme makeover of Miranda that today's decision may portend.

I

In the days before Miranda, this Court's sole metric for evaluating the admissibility of confessions was a voluntariness standard rooted in both the Fifth Amendment's Self-Incrimination Clause and the Due Process Clause of the Fourteenth Amendment.). The question in these voluntariness cases was whether the particular "defendant's will" had been "overborne."

Courts took into account both "the details of the interrogation" and "the characteristics of the accused," *Schneckloth v. Bustamonte*, and then "weigh[ed] . . . the circumstances of pressure

against the power of resistance of the person confessing."

All manner of individualized, personal characteristics were relevant in this voluntariness inquiry. Among the most frequently mentioned factors were the defendant's education, physical condition, intelligence, and mental health. The suspect's age also received prominent attention in several cases, e.g., *Gallegos v. Colorado*, 370 U. S. 49, 54 (1962), especially when the suspect was a "mere child." *Haley v. Ohio*, 332U. S. 596, 599 (1948). The weight assigned to any one consideration varied from case to case. But all of these factors, along with anything else that might have affected the "individual's . . . capacity for effective choice," were relevant in determining whether the confession was coerced or compelled. The all-encompassing nature of the voluntariness inquiry had its benefits. It allowed courts to accommodate a "complex of values," and to make a careful, highly individualized determination as to whether the police had wrung "a confession out of [the] accused against his will." But with this flexibility came a decrease in both certainty and predictability, and the voluntariness standard proved difficult "for law enforcement officers to conform to, and for courts to apply in a consistent manner."

In *Miranda*, the Court supplemented the voluntariness inquiry with a "set of prophylactic measures" designed to ward off the "'inherently compelling pressures' of custodial interrogation." Miranda greatly simplified matters by requiring police to give suspects standard warnings before commencing any custodial interrogation.), and they often require courts to suppress "trustworthy and highly probative" statements that may be perfectly "voluntary under [a] traditional Fifth Amendment analysis But with this rigidity comes increased clarity. Miranda provides "a workable rule to guide police officers," and an administrable standard for the courts. As has often been recognized, this gain in clarity and administrability is one of Miranda's "principal advantages."

No less than other facets of Miranda, the threshold requirement that the suspect be in "custody" is "designed to give clear guidance to the police." *Yarborough v. Alvarado*. Custody under Miranda attaches where there is a "formal arrest" or a "restraint on freedom of movement" akin to formal arrest. *California v. Beheler*. This standard is "objective" and turns on how a hypothetical "reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action

Until today, the Court's cases applying this test have focused solely on the "objective circumstances of the inter-rogation. Relevant factors have included such things as where the questioning occurred,[26] how long it lasted,[27] what was said,[28] any physical restraints placed on the suspect's movement,[29] and whether the suspect was allowed to leave when the questioning was through.[30] The totality of these circumstances—the external circumstances, that is, of the interrogation itself—is what has mattered in this Court's cases. Personal characteristics of suspects have consistently been rejected or ignored as irrelevant under a one-size-fits-all reasonable-person standard. *Stansbury*. ("[C]ustody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned").

For example, in *Berkemer v. McCarty*, police officers conducting a traffic stop questioned a man who had been drinking and smoking marijuana before he was pulled over.

26 *Maryland v. Shatzer*, 559 U. S. ___, ___ (2010).
27 *Berkemer v. McCarty*, 468 U. S. 420, 437–438 (1984).
28 *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977) (per curiam).
29 *New York v. Quarles*, 467 U. S. 649, 655 (1984).
30 *California v. Beheler*, 463 U. S. 1121, 1122–1123 (1983) (per curiam).

Although the suspect's inebriation was readily apparent to the officers at the scene, the Court's analysis did not advert to this or any other individualized consideration. Instead, the Court focused only on the external circumstances of the interrogation itself. The opinion concluded that a typical "traffic stop" is akin to a "Terry stop" and does not qualify as the equivalent of "formal arrest."

California v. Beheler, supra, is another useful example. There, the circumstances of the interrogation were "remarkably similar" to the facts of the Court's earlier decision in *Oregon v. Mathiason*,—the suspect was "not placed under arrest," he "voluntarily [came] to the police station," and he was "allowed to leave unhindered by police after a brief inter-view." A California court in Beheler had nonetheless distinguished Mathiason because the police knew that Beheler "had been drinking earlier in the day" and was "emotionally distraught." In a summary reversal, this Court explained that the fact "[t]hat the police knew more" personal information about Beheler than they did about Mathiason was "irrelevant." Neither one of them was in custody under the objective reasonable-person standard. *See* also *Alvarado* (experience with law enforcement irrelevant to Miranda custody analysis "as a de novo matter").[31]

The glaring absence of reliance on personal characteristics in these and other custody cases should come as no surprise. To account for such individualized considerations would be to contradict Miranda's central premise. The Miranda Court's decision to adopt its inflexible prophylactic requirements was expressly based on the notion that "[a]ssessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation."

II

In light of this established practice, there is no denying that, by incorporating age into its analysis, the Court is embarking on a new expansion of the established custody standard. And since Miranda is this Court's rule, "not a constitutional command," it is up to the Court "to justify its expansion." *Arizona v. Roberson*, (KENNEDY, J., dissenting). This the Court fails to do.

In its present form, Miranda's prophylactic regime already imposes "high cost[s]" by requiring suppression of confessions that are often "highly probative" and "voluntary" by any traditional standard Nonetheless, a "core virtue" of Miranda has been the clarity and precision of its guidance to "police and courts." The Court has, however, repeatedly cautioned against upsetting the careful "balance" that Miranda struck, and it has "refused to sanction attempts to expand [the] Miranda holding" in ways that would reduce its "clarity." *See Quarles*, 467 U. S., at 658 (citing cases). Given this practice, there should be a "strong presumption" against the Court's new departure from the established custody test.

In my judgment, that presumption cannot be overcome here.

A

The Court's rationale for importing age into the custody standard is that minors tend to lack adults' "capacity to exercise mature judgment" and that failing to account for that "reality" will leave some minors unprotected under Miranda in situations where they perceive themselves to be confined. . I do not dispute that many suspects who are under 18 will be more susceptible

31 The Court claims that "[n]ot once" have any of our cases "excluded from the custody analysis a circumstance that we determined was relevant and objective, simply to make the fault line between custodial and noncustodial 'brighter.' " Surely this is incorrect. The very act of adopting a reasonable-person test necessarily excludes all sorts of "relevant and objective" circumstances—for example, all the objective circumstances of a suspect's life history—that might otherwise bear on a custody determination.

to police pressure than the average adult. As the Court notes, our pre-Miranda cases were particularly attuned to this "reality" in applying the constitutional requirement of voluntariness in fact. It is no less a "reality," however, that many persons over the age of 18 are also more susceptible to police pressure than the hypothetical reasonable person. See *Payne* (fact that defendant was a "mentally dull 19-year-old youth" relevant in voluntariness inquiry). Yet the Miranda custody standard has never accounted for the personal characteristics of these or any other individual defendants.

Indeed, it has always been the case under Miranda that the unusually meek or compliant are subject to the same fixed rules, including the same custody requirement, as those who are unusually resistant to police pressure.

Miranda's rigid standards are both overinclusive and underinclusive. They are overinclusive to the extent that they provide a windfall to the most hardened and savvy of suspects, who often have no need for Miranda's protections. ("[N]o amount of circumstantial evidence that the person may have been aware of" his rights can overcome Miranda's requirements), with *Orozco v. Texas*, 394 U. S. 324, 329 (1969) (White, J., dissenting) ("Where the defendant himself [w]as a lawyer, policeman, professional criminal, or otherwise has become aware of what his right to silence is, it is sheer fancy to assert that his answer to every question asked him is compelled unless he is advised of those rights with which he is already intimately familiar"). And Miranda's requirements are underinclusive to the extent that they fail to account for "frailties," "idiosyncrasies," and other individualized considerations that might cause a person to). But if it is, then the weakness is an inescapable consequence of the Miranda Court's decision to supplement the more holistic voluntariness requirement with a one-size-fits-all prophylactic rule.

That is undoubtedly why this Court's Miranda cases have never before mentioned "the suspect's age" or any other individualized consideration in applying the custody standard. And unless the Miranda custody rule is now to be radically transformed into one that takes into account the wide range of individual characteristics that are relevant in determining whether a confession is voluntary, the Court must shoulder the burden of explaining why age is different from these other personal characteristics.

Why, for example, is age different from intelligence? Suppose that an officer, upon going to a school to question a student, is told by the principal that the student has an I. Q. of 75 and is in a special-education class. Are those facts more or less important than the student's age in determining whether he or she "felt . . . at liberty to terminate the interrogation and leave

How about the suspect's cultural background? Suppose the police learn (or should have learned) that a suspect they wish to question is a recent immigrant from a country in which dire consequences often befall any person who dares to attempt to cut short any meeting with the police. Is this really less relevant than the fact that a suspect is a month or so away from his 18th birthday?

The defendant's education is another personal characteristic that may generate "conclusions about behavior and perception." Under today's decision, why should police officers and courts "blind themselves to the fact that a suspect has "only a fifth-grade education? Alternatively, what if the police know or should know that the suspect is "a college-educated man with law school training"? *See Crooker* overruled by *Miranda*. How are these individual considerations meaningfully different from age in their "relationship to a reasonable person's understanding of his freedom of action"? The Court proclaims that "[a] child's age . . . is different," but the basis for this ipse dixit is dubious.

I have little doubt that today's decision will soon be cited by defendants—and perhaps by prosecutors as well—for the proposition that all manner of other individual characteristics should be treated like age and taken into account in the Miranda custody calculus. Indeed, there are already lower court decisions that take this approach. See *United States v. Beraun-Panez.*

In time, the Court will have to confront these issues, and it will be faced with a difficult choice. It may choose to distinguish today's decision and adhere to the arbitrary proclamation that "age . . . is different." Or it may choose to extend today's holding and, in doing so, further undermine the very rationale for the Miranda regime.

B

If the Court chooses the latter course, then a core virtue of Miranda—the "ease and clarity of its application"—will be lost However, even today's more limited departure from Miranda's one-size-fits-all reasonable-person test will produce the very consequences that prompted the Miranda Court to abandon exclusive reliance on the voluntariness test in the first place: The Court's test will be hard for the police to follow, and it will be hard for judges to apply.

The Court holds that age must be taken into account when it "was known to the officer at the time of the interview," or when it "would have been objectively apparent" to a reasonable officer.. The first half of this test overturns the rule that the "initial determination of custody" does not depend on the "subjective views harbored by . . . interrogating officers.". The second half will generate time-consuming satellite litigation over a reasonable officer's perceptions. When, as here, the interrogation takes place in school, the inquiry may be relatively simple. But not all police questioning of minors takes place in schools. In many cases, courts will presumably have to make findings as to whether a particular suspect had a sufficiently youthful look to alert a reasonable officer to the possibility that the suspect was under 18, or whether a reasonable officer would have recognized that a suspect's I. D. was a fake. The inquiry will be both "time-consuming and disruptive" for the police and the courts. It will also be made all the more complicated by the fact that a suspect's dress and manner will often be different when the issue is litigated in court than it was at the time of the interrogation.

Even after courts clear this initial hurdle, further problems will likely emerge as judges attempt to put themselves in the shoes of the average 16-year-old, or 15-year-old, or 13-year-old, as the case may be. Consider, for example, a 60-year-old judge attempting to make a custody determination through the eyes of a hypothetical, average 15-year-old. Forty-five years of personal experience and societal change separate this judge from the days when he or she was 15 years old. And this judge may or may not have been an average 15-year-old. The Court's answer to these difficulties is to state that "no imaginative powers, knowledge of developmental psychology, [or] training in cognitive science" will be necessary.. Judges "simply need the common sense," the Court assures, "to know that a 7-year-old is not a 13-year-old and neither is an adult." It is obvious, however, that application of the Court's new rule demands much more than this.

Take a fairly typical case in which today's holding may make a difference. A 16-year-old moves to suppress incriminating statements made prior to the administration of Miranda warnings. The circumstances are such that, if the defendant were at least 18, the court would not find that he or she was in custody, but the defendant argues that a reasonable 16-year-old would view the situation differently. The judge will not have the luxury of merely saying: "It is common sense that a 16-year-old is not an 18-year-old. Motion granted." Rather, the judge will be required to determine whether the differences between a typical 16-year-old and a typical 18-

year-old with respect to susceptibility to the pressures of interrogation are sufficient to change the outcome of the custody determination. Today's opinion contains not a word of actual guidance as to how judges are supposed to go about making that determination.

C

Petitioner and the Court attempt to show that this task is not unmanageable by pointing out that age is taken into account in other legal contexts. In particular, the Court relies on the fact that the age of a defendant is a relevant factor under the reasonable-person standard applicable in negligence suits. But negligence is generally a question for the jury, the members of which can draw on their varied experiences with persons of different ages. It also involves a post hoc determination, in the reflective atmosphere of a deliberation room, about whether the defendant conformed to a standard of care. The Miranda custody determination, by contrast, must be made in the first instance by police officers in the course of an investigation that may require quick decision making

Equally inapposite are the Eighth Amendment cases the Court cites in support of its new rule. Those decisions involve the "judicial exercise of independent judgment" about the constitutionality of certain punishments. Like the negligence standard, they do not require on-the-spot judgments by the police.

Nor do state laws affording extra protection for juveniles during custodial interrogation provide any support for petitioner's arguments. States are free to enact additional restrictions on the police over and above those demanded by the Constitution or Miranda. In addition, these state statutes generally create clear, workable rules to guide police conduct. Today's decision, by contrast, injects a new, complicating factor into what had been a clear, easily applied prophylactic rule.[32]

III

The Court's decision greatly diminishes the clarity and administrability that have long been recognized as "principal advantages" of Miranda's prophylactic requirements. *See Moran*. But what is worse, the Court takes this step unnecessarily, as there are other, less disruptive tools available to ensure that minors are not coerced into confessing.

As an initial matter, the difficulties that the Court's standard introduces will likely yield little added protection for most juvenile defendants. Most juveniles who are subjected to police interrogation are teenagers nearing the age of majority. These defendants' reactions to police pressure are unlikely to be much different from the reaction of a typical 18-year-old in similar circumstances. A one-size-fits-all Miranda custody rule thus provides a roughly reasonable fit for these defendants.

In addition, many of the concerns that petitioner raises regarding the application of the Miranda custody rule to minors can be accommodated by considering the unique circumstances present when minors are questioned in school. The Miranda custody rule has always taken into account the setting in which questioning occurs, restrictions on a suspect's freedom of movement, and the presence of police officers or other authority figures. It can do so here as

32 The Court also relies on North Carolina’s concession at oral argument that a court could take into account a suspect’s blindness as a factor relevant to the Miranda custody determination. This is a far-fetched hypothetical, and neither the parties nor their amici cite any case in which such a problem has actually arisen. Presumably such a case would involve a situation in which a blind defendant was given “a typed document advising him that he [was] free to leave.” In such a case, furnishing this advice in a form calculated to be unintelligible to the suspect would be tantamount to failing to provide the advice at all. And advice by the police that a suspect is or is not free to leave at will has always been regarded as a circumstance regarding the conditions of the interrogation that must be taken into account in making the Miranda custody determination.

well. Finally, in cases like the one now before us, where the suspect is much younger than the typical juvenile defendant, courts should be instructed to take particular care to ensure that incriminating statements were not obtained involuntarily. The voluntariness inquiry is flexible and accommodating by nature, care" must be exercised in applying the voluntariness test where the confession of a "mere child" is at issue. If Miranda's rigid, one-size-fits-all standards fail to account for the unique needs of juveniles, the response should be to rigorously apply the constitutional rule against coercion to ensure that the rights of minors are protected. There is no need to run Miranda off the rails.

The Court rests its decision to inject personal characteristics into the Miranda custody inquiry on the principle that judges applying Miranda cannot "blind themselves to . . . commonsense reality." But the Court's shift is fundamentally at odds with the clear prophylactic rules that Miranda has long enforced. Miranda frequently requires judges to blind themselves to the reality that many un-Mirandized custodial confessions are "by no means involuntary" or coerced. It also requires police to provide a rote recitation of Miranda warnings that many suspects already know and could likely recite from memory.33 Under today's new, "reality"-based approach to the doctrine, perhaps these and other principles of our Miranda jurisprudence will, like the custody standard, now be ripe for modification. Then, bit by bit, Miranda will lose the clarity and ease of application that has long been viewed as one of its chief justifications. I respectfully dissent.

Questions and Notes

1. Do you believe that J.D.B. will adversely affect Miranda's clarity? Why? Why not?

2. On remand will (should) J.D.B. prevail? Explain.

3. If the Alito opinion had prevailed, would (should) J.D.B. win on the merits. Explain.

4. Suppose a 30 year old soldier had been taken from his regular routine by a military officer and brought to the Captain's quarters. Suppose further that the Captain had told him that he should tell the truth. Would (should) that soldier be deemed in custody?

5. If your answer to 4 was "yes," would that indicate that J.D.B. unnecessarily resolved the question before it?

6. When, if ever, would a 13 year-old be in custody under circumstances that a 25 year-old would not? What about the Mathiason situation?

7. Given that custody is such a multi-factored fact bound determination anyway, is there any

33 Surveys have shown that "[l]arge majorities" of the public are aware that "individuals arrested for a crime" have a right to "remai[n] silent (81%)," a right to "a lawyer (95%)," and a right to have a lawyer "appointed" if the arrestee "cannot afford one (88%)." *See* Belden, Russonello & Stewart, Developing a National Message for Indigent Defense: online at http://www.nlada.org/DMS/Documents/1211996548.53/Polling%20results%20report.pdf.

harm in a special rule for juveniles? Explain.

Insert on page 795 after Question 6

MARYLAND v. SHATZER

559 U.S. ____ (2010)

JUSTICE SCALIA delivered the opinion of the Court.

(For the facts of the case see page 757 of this casebook.)

III

The facts of this case present an additional issue. No one questions that Shatzer was in custody for *Miranda* purposes during the interviews with Detective Blankenship in 2003 and Detective Hoover in 2006. Likewise, no one questions that Shatzer triggered the *Edwards* protections when, according to Detective Blankenship's notes of the 2003 interview, he stated that "'he would not talk about this case without having an attorney present.'" After the 2003 interview, Shatzer was released back into the general prison population where he was serving an unrelated sentence. The issue is whether that constitutes a break in *Miranda* custody.

We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue. See *Perkins*. Whether it does depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against—the "danger of coercion [that] results from the *interaction* of custody and official interrogation." *Perkins, (*emphasis added). To determine whether a suspect was in *Miranda* custody we have asked whether "there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." This test, no doubt, is satisfied by all forms of incarceration. 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." *Berkemer* v. *McCarty.* Thus, the temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop, does not constitute *Miranda* custody.

Here, we are addressing the interim period during which a suspect was not interrogated, but was subject to a baseline set of restraints imposed pursuant to a prior conviction. Without minimizing the harsh realities of incarceration, we think lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda.*

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.

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.[34] And even where the possibility of parole exists, the former interrogator has no apparent power to decrease the time served. This is in stark contrast to the circumstances faced by the defendants in *Edwards, Roberson,* and *Minnick,* whose continued detention as suspects rested with those controlling their interrogation, and who confronted the uncertainties of what final charges they would face, whether they would be convicted, and what sentence they would receive.

Shatzer's experience illustrates the vast differences between *Miranda* custody and incarceration pursuant to conviction. At the time of the 2003 attempted interrogation, Shatzer was already serving a sentence for a prior conviction. After that, he returned to the general prison population in the Maryland Correctional Institution-Hagerstown and was later transferred, for unrelated reasons, down the street to the Roxbury Correctional Institute. Both are medium-security state correctional facilities. Inmates in these facilities generally can visit the library each week, have regular exercise and recreation periods, can participate in basic adult education and occupational training, are able to send and receive mail, and are allowed to receive visitors twice a week. His continued detention after the 2003 interrogation did not depend on what he said (or did not say) to Detective Blankenship, and he has not alleged that he was placed in a higher level of security or faced any continuing restraints as a result of the 2003 interrogation. The "inherently compelling pressures" of custodial interrogation ended when he returned to his normal life.

JUSTICE STEVENS, Concurring in Judgment

The many problems with the Court's new rule are exacerbated in the very situation in this case: a suspect who is in prison. Even if, as the Court assumes, a trip to one's home significantly changes the *Edwards* calculus, a trip to one's prison cell is not the same. A prisoner's freedom is severely limited, and his entire life remains subject to government control. Such an environment is not conducive to "shak[ing] off any residual coercive effects of his prior custody."[35] Nor can a prisoner easily "seek advice from an attorney, family members, and friends," especially not within 14 days; prisoners are frequently subject to restrictions on communications. Nor, in most cases, can he live comfortably knowing that he cannot be badgered by police; prison is not like a normal situation in which a suspect "is in control, and need only shut his door or walk away to avoid police badgering." Indeed, for a person whose every move is controlled by the State, it is likely that "his sense of dependence on, and trust in, counsel as the guardian of his interests in dealing with government officials intensified."[36] The Court ignores these realities of prison, and

34 We distinguish the duration of incarceration from the duration of what might be termed interrogative custody. When a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of *that separation* is assuredly dependent upon his interrogators. For which reason once he has asserted a refusal to speak without assistance of counsel *Edwards* prevents any efforts to get him to change his mind during that interrogative custody.

35 Cf. *Orozco* v. *Texas,* 394 U. S. 324, 326 (1969) (holding that a suspect was in custody while being held in own home, despite his comfort and familiarity with the surroundings); *Mathis* v. *United States,* 391 U. S. 1, 5 (1968) (holding that a person serving a prison sentence for one crime was in custody when he was interrogated in prison about another, unrelated crime).

36 Prison also presents a troubling set of incentives for police. First, because investigators know that their suspect is also a prisoner, there is no need formally to place him under arrest. Thus, police generally can interview prisoners even without probable cause to hold them. This means that police can interrogate suspects with little or no evidence

instead rests its argument on the supposition that a prisoner's "detention . . . is relatively disconnected from their prior unwillingness to cooperate in an investigation." But that is not necessarily the case. Prisoners are uniquely vulnerable to the officials who control every aspect of their lives; prison guards may not look kindly upon a prisoner who refuses to cooperate with police. And cooperation frequently is relevant to whether the prisoner can obtain parole. Moreover, even if it is true as a factual matter that a prisoner's fate is not controlled by the police who come to interrogate him, how is the prisoner supposed to know that? As the Court itself admits, compulsion is likely when a suspect's "captors appear to control [his] fate." But when a guard informs a suspect that he must go speak with police, it will "appear" to the prisoner that the guard and police are not independent. "Questioning by captors, who *appear* to control the suspect's fate, may create mutually reinforcing pressures that the Court has assumed will weaken the suspect's will." *Illinois* v. *Perkins*.

Questions and Notes

1. Is Justice Stevens saying that Schatzer was in custody for *Miranda* purposes? If so, why did he vote to affirm the conviction? If not, what is he saying?

2. Is Scalia saying that Schatzer was not in custody or only that he was not in custody for *Miranda* purposes? If the latter, explain the difference?

of guilt, and police can do so time after time, without fear of being sued for wrongful arrest. Second, because police know that their suspect is otherwise detained, there is no need necessarily to resolve the case quickly. Police can comfortably bide their time, interrogating and reinterrogating their suspect until he slips up. Third, because police need not hold their suspect, they do not need to arraign him or otherwise initiate formal legal proceedings that would trigger various protections.