No. 02-1684

In The Supreme Court of the United States

MICHAEL YARBOROUGH, Warden of California State Prison – Los Angeles County,

Petitioner,

v.

MICHAEL ALVARADO,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF RESPONDENT

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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2254 of Title 28 of the United States Code provides in relevant part:

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

STATEMENT OF THE CASE

On the night of September 22, 1995, seventeen-year-old Michael Alvarado went to Manuel Rivera's house to "hang out" with friends and spend the night, something he had done many times before. J.A. 377, 411-414. Later that night, the boys went to a nearby mall to use the pay phones, something they also had done many times before. J.A. 391, 414-416. At the mall, Paul Soto, a person Michael Alvarado had never met before that day, shot and killed Mr. Francisco Castaneda. J.A. 309, 350; Pet. App. C3-C4.

A month later, on October 24, 1995, Los Angeles County Sheriff's Detective Cheryl Comstock left a message at Michael Alvarado's home, where he lived with his parents, explaining that she "needed" to speak with him. J.A 34, 48-49, 72, 185; Pet. App. B3. Michael was 17 years old, in high school, and was working at the Town Center Hall for school credit. J.A. 34, 48, 122-123, 356; Pet. App. B3. Comstock also telephoned Michael's mother at the Post Office where she worked, and informed her that the police "needed" to speak to her son. J.A. 49, 72, 185. Mrs. Alvarado told Comstock that Michael's father would bring him to the Sheriff's station so he could be interviewed. J.A 72, 185, 350-351; Pet. App. B3. Both Michael's mother and father accompanied their son to the Sheriff's station, and they gave *their* permission for Comstock to interview him. J.A. 72-73, 185; Pet. App. B3. Before Michael was led away by Comstock he asked "Can't someone come in with me?" or "Should someone be here for me?" J.A. 49, 185-186. The question was met with silence. J.A. 185-186. As Michael was being escorted inside, his parents asked if they could accompany him, but Detective Comstock refused to permit Michael's parents to attend the interrogation. J.A. 49, 185-186. Mr. and Mrs. Alvarado waited in the lobby for two

and a half hours while Michael was questioned in an "interview room." J.A. 72-73, 186, 353-354.

Michael was brought through a lobby door, down a hallway and into a back room containing a table and two chairs. J.A. 351. Michael had never been in a police interrogation room before. J.A. 352. Michael heard another detective ask Comstock "What do we have here; we are going to question a suspect?" J.A. 50, 189. Michael was never told prior to the interrogation that he was not under arrest or that he was free to leave at any time. J.A. 72-165.

Detective Comstock employed many of the interrogation techniques with which this Court was concerned in *Miranda*. Michael was told to try to ignore that he was being tape recorded. J.A. 73. Detective Comstock questioned Michael alone[1] for two and one-half hours, one-half hour of which was not recorded. J.A. 72-165, 353, 557. Comstock expressed disbelief at Michael's version of events, told him that she was 95% sure of the facts since she had three notebooks full of witness accounts, and urged him to tell the truth: "Now all I'm simply doing is giving you the opportunity to tell the truth and when we got that many people telling a story and all of the sudden

[1] "Officers are told by manuals that the 'principal psychological factor contributing to a successful interrogation is privacy – being alone with the person under interrogation.' " *Miranda v. Arizona*, 384 U.S. 436, 449 (1966) (quoting Inbau & Reid, *Criminal Interrogation and Confessions* 1 (1962)). The Miranda Court stated it was concerned "primarily with this interrogation atmosphere and the evils it can bring." *Id.* at 456.

you tell something far fetched different."[2] J.A. 50-54, 101-102, 106, 109; Pet. App. B3. Comstock then assured Michael that she knew he didn't have any intention of anything happening, and that maybe he wasn't thinking clearly because he had been drinking and maybe he was hiding behind the truck because he didn't want to be up there. Comstock told him "It's very difficult to admit when you've made a mistake like this, okay? And none of us like to have to admit when you made such a bad mistake."[3] J.A. 103, 109.

Michael then made self-incriminating statements about what took place before and after the shooting. J.A. 54. After Michael made these incriminating statements, Comstock asked Michael "When we're done here today, were you, you going to go back home or to your grandmother's?" J.A. 54. Later, Comstock offered Michael the use of a phone and told him "we should be done here pretty quick. I'll get you out of here, so you can go about

[2] "[T]he manuals instruct the police to display an air of confidence in the suspect's guilt and from outward appearance maintain only an interest in confirming certain details. The guilt of the subject should be posited as a fact" *Miranda*, 384 U.S. at 450.

[3] "The interrogator should direct his comments toward the reasons why the subject committed the act, rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject had . . . too much to drink. . . . The officers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already – that he is guilty. Explanations to the contrary are dismissed and discouraged." *Miranda*, 384 U.S. at 450. (citing Inbau & Reid, *supra*, at 34-55, 87). "The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt." *Id*. at 451.

your activities." J.A. 150. Shortly thereafter, Comstock told Michael "Okay we don't have anything else and what I'm going to do is go ahead, uhm, escort you out to the lobby where your parents are and then you guys can go about whatever activities you have and, uh, we'll conclude the interview." J.A. 165. Michael never left the interrogation until Comstock was finished with her questioning. J.A. 353-354. Subsequently, Comstock notified Michael's parents that she had an arrest warrant for him, and he surrendered to the police the next morning. J.A. 54-55, 354-355; Pet. App. C15.

At trial, the prosecution played excerpts of Michael's taped interview during its case in chief. The most damaging statement was Michael's saying that he knew Soto was going to rob the man and take his truck so they could get home from Rivera's place. J.A. 331-339 (RT 609); Pet. App. C4. However, evidence was also presented tending to show that respondent only learned of Soto's plan to rob the man and take his truck *after* the incident and before the interrogation.[4] J.A. 457, 459, 462, 482.

The defense focused on inconsistencies in Rivera's testimony, and respondent testified in his own defense. J.A. 201, 280-328, 341-570; Pet. App. C4. Michael denied an intent to kill Mr. Casteneda, and said he had not talked with the victim, nor made any demands. Pet. App. C4. He also testified that he did not have a gun or bullets that

[4] The prosecution also played a taped interview of Soto to the jury. In that interview, Soto said he was drunk on the night of the shooting, and that the gun had fired accidentally. Pet. App. C4.

night. *Id.* He insisted he had no idea what was going on and he did not encourage Soto in any way. *Id.*

The only evidence of Michael's culpability, other than his statements to police was the equivocal testimony of Manuel Rivera, another juvenile, who had been drinking and smoking marijuana prior to the incident, and who had been granted immunity in exchange for his testimony. J.A. 282, 319-322; Pet. App. 27-28. Rivera testified on direct examination that he heard Soto say "Let's jack" and "I'll give you half." J.A. 228-233, 237-238. Rivera believed Michael said "Let's go" because he saw his lips move. J.A. 233-234. Rivera saw Michael and Soto walk toward the truck according to Rivera. Michael approached the passenger side near the right rear tire and Soto approached the driver's side where Casteneda was going through a dumpster. The shooting followed immediately thereafter. J.A. 238-240, 243-245, 247, 252.

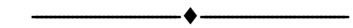
On cross-examination, Rivera admitted that he was talking on the phone in an alcove with people talking around him when Soto said "Let's jack." Rivera acknowledged that when this statement was made Michael was either in or walking back from the donut shop talking. J.A. 295-299, 304. Rivera also admitted that, during his earlier statements to police, he never said Soto uttered the phrase "Let's jack" again in front of Michael. J.A. 293; Pet. App. A28. Rivera could not say with certainty whether Michael ever said "Let's go" or "Let's do it" because Rivera did not get off the phone until after he heard the gunshot. J.A. 290-292, 296, 299, 303-304, 317, 327; Pet. App. A28. At the time of the shooting, Michael was several feet behind the rear passenger tire, he never talked to Casteneda, and he did not touch him or his truck. J.A. 315-316, 326. Rivera also admitted that he lied to the police and the prosecutor

about his role in hiding the gun. Although the crime occurred in 1995, it wasn't until 1997 that Rivera first claimed that Soto said "I'll give you half" or "Let's split it." J.A. 282-285, 293; Pet. App. A28.

Rivera testified that he and Michael frequently went to the mall to use the telephones there because the mall was behind Rivera's house and he didn't have a phone, and that they frequently went to lunch at the café there because it was by the high school. J.A. 346, 355-358, 362, 366-369, 391-392. The boys knew that there was a Sheriff's substation at the mall. J.A. 359, 371. Rivera said neither he nor Michael knew Soto had a gun before the shooting, nor was there any conversation that evening about shooting or robbing anyone. J.A. 305, 350, 404-405; Pet. App. A29. Michael never encouraged Soto, or knew what he was about to do. J.A. 436, 568-569. Immediately after Soto shot the victim, the group ran back to Rivera's house where Soto tried to hide his gun under Rivera's bed when Rivera was out of the room. J.A. 264, 269-270; Pet. App. A28.

Soto was convicted of first degree murder with the use of a gun, committed during the attempt to commit second degree robbery. He was sentenced to a term of life in prison without possibility of parole, plus four years for the firearm use. Pet. App. C4. Michael was convicted of first degree murder and attempted robbery, but on trial counsel's motion, the court reduced the conviction to second degree murder and sentenced him to a term of 15 years to life. Pet. App. C5.

Respondent adopts Petitioner's recitation of the procedural aspects of the case post-trial. Pet. Br. 4-6.



SUMMARY OF ARGUMENT

I. The Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself. When a person is taken into custody or deprived of his freedom by the authorities in any significant way, and then subjected to questioning, the privilege against self-incrimination is jeopardized and the Constitution requires that procedural safeguards be employed to protect that privilege. These procedural safeguards are encompassed in the now familiar *Miranda* warnings. "Custody," for *Miranda* purposes, is defined as formal arrest or a significant restraint on movement associated with formal arrest. This restraint can be psychological as well as physical. The test for determining custody is objective – whether, under the totality of the circumstances, a reasonable person in the suspect's position would have felt he or she was not at liberty to terminate the interrogation and leave. Factors to be taken into account in the totality of the circumstances are those objective facts apparent or known to both the police and the suspect at the time of the interrogation.

If the circumstances surrounding an interrogation include youth and other considerations attendant to a juvenile defendant, such as parental involvement at the behest of police and a subsequent show of authority by police in refusing to allow the parents to attend the interview, those factors, as this Court has recognized in other relevant contexts, cannot be ignored in either a consideration of the totality of the circumstances, or in calibrating the appropriate reasonable person standard. After examining all the circumstances surrounding an interrogation, if one of those objective circumstances is juvenile status, it cannot fairly be ignored. The relevant inquiry is not

whether a reasonable adult in the suspect's position would have felt free to terminate an interrogation and leave, but how a reasonable youth or juvenile of similar age and circumstance would have assessed his or her situation.

In sum, although it may not be appropriate to take into account a juvenile's individual personal characteristics, such as his level of maturity, or his cognitive abilities, because those are unique to him and would constitute a subjective analysis, in applying the objective test, it is appropriate to ask what a reasonable juvenile in the suspect's circumstances would understand his custody situation to be. The objective test cannot be applied in a rational manner if it completely ignores the fact that the suspect being interrogated is a juvenile. The standard, thus, remains an objective one; the relevant inquiry is whether a reasonable child or juvenile in the suspect's position would understand, based on the totality of the circumstances, that he was free to leave. This standard, which has been adopted in one form or another by every court to address the issue, will not unduly hamper legitimate law enforcement interests.

II. AEDPA is no barrier to habeas corpus relief if the relevant state court decision was either contrary to, or an unreasonable application of, clearly established federal law as determined by this Court. The California Court of Appeal's decision, which determined that Michael Alvarado was not in custody, was both contrary to and an unreasonable application of clearly established federal law because the state court ignored salient factors, identified in this Court's custody relevant to the totality of the circumstances, and then misapplied the controlling legal standard to the facts of this case. The state court decision was also contrary to and an unreasonable application of

clearly established federal law in failing to recognize that the correct reasonable person standard in this case was that of a reasonable juvenile of similar age.

Because the state court's decision was objectively unreasonable, this Court need not decide whether the Ninth Circuit's decision was also correct under the "extension" analysis which panel used in deciding this case. This analysis, which the Ninth Circuit drew directly from this Court's decision in *Williams v. Taylor*, has been adopted by all the federal circuit courts of appeal. However, there is little functional difference between applying the law to an analogous context and "extending" it, and the Ninth Circuit correctly found that the California Court of Appeal decision in this case was unreasonable.

ARGUMENT

I. IN ASSESSING THE TOTALITY OF CIRCUMSTANCES AND IN APPLYING THE REASONABLE PERSON STANDARD, THE CALIFORNIA COURT OF APPEAL FAILED TO CONSIDER THAT RESPONDENT WAS A JUVENILE BROUGHT BY HIS PARENTS TO THE POLICE STATION ON POLICE DEMAND AND SEPARATED FROM THEM AGAINST HIS WILL.

A. *Miranda v. Arizona* Provides Constitutionally Required Safeguards to Preserve the Fifth Amendment Privilege Against Self-Incrimination in the Context of Custodial Police Interrogations.

The Fifth Amendment provides that no person may be "compelled in any criminal case to be a witness against

himself." U.S. Const. amend. V. "The Fifth Amendment's Self-Incrimination Clause is incorporated in the Due Process Clause of the Fourteenth Amendment and thus applies to the States." *Dickerson v. United States*, 530 U.S. 428, 434 (2000) (citing *Malloy v. Hogan*, 378 U.S. 1, 6-11 (1964)). "When an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subject to questioning, the privilege against self-incrimination is jeopardized and procedural safeguards must be employed to protect the privilege." *Miranda v. Arizona*, 384 U.S. 436, 478 (1966).

In *Miranda*, this Court announced "concrete constitutional guidelines for law enforcement agencies and courts to follow" in the context of custodial police interrogations. *Id*. at 442. Those guidelines, which are required by the Fifth Amendment, require police to provide suspects with four warnings: "a suspect 'has the right to remain silent, that anything he says can be used against him in a court of law, that 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.'" *Dickerson*, 530 U.S. at 434 (citing *Miranda*, 384 U.S. at 479).

"The warning[s] mandated by *Miranda* [were] meant to preserve the privilege during 'incommunicado interrogation of individuals in a police-dominated atmosphere,' which generates inherently compelling 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." *Illinois v. Perkins*, 496 U.S. 292, 296 (1990)

(quoting *Miranda*, 384 U.S. at 445, 467).[5] The *Miranda* safeguards "ensure that the police do not coerce or trick captive suspects into confessing [and] to relieve the 'inherently compelling pressures' generated by the custodial setting itself, 'which work to undermine the individual's will to resist.'" *Berkemer v. McCarty*, 468 U.S. 420, 433 (1983) (footnotes omitted).

B. Respondent Was "In Custody" for Purposes of *Miranda* Because Under the Totality of the Circumstances a Reasonable Person in His Position Would Not Have Felt Free to Terminate the Interrogation and Leave.

A person is in "custody" not only after a formal arrest, but whenever there has been a restraint on freedom of movement of the degree associated with formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983); *Miranda*, 384 U.S. at 444. This Court has established a two-part standard for determining whether a suspect is in custody for *Miranda* purpose: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). "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

[5] In *Miranda*, this Court also stressed that "the modern practice of in-custody interrogation is psychologically rather than physically oriented." 384 U.S. at 448.

degree associated with a formal arrest.'" *Id*. at 112 (citing *Beheler*, 463 U.S. at 1125 (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam))); *see also Stansbury v. California*, 511 U.S. 318, 322 (1994) ("In determining whether an individual was in custody, a court must examine all the circumstances surrounding the interrogation, but 'the ultimate inquiry is simply whether there [was] a "formal arrest or restraint on movement" of the degree associated with a formal arrest')."

Although questioning at a police station does not conclusively resolve whether the restraint on a person's freedom of movement was such as to render the interrogation custodial, a police-conducted interrogation which occurs in an "interview room" at the police station is much more likely to be deemed custodial than other police-citizen encounters. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam). This is evident from this Court's decision holding that many traffic stops are noncustodial for Fifth Amendment purposes because they are presumptively temporary and brief, and thus are different from "station house interrogation." *Berkemer*, 468 U.S. at 437-38. This Court also noted that traffic stops are public, and do not take place in the privacy of the police interrogation room. *Id*. Therefore, roadside stops are "substantially less 'police dominated' than that surrounding the kinds of interrogation at issue in *Miranda* itself [citations omitted] and in the subsequent cases in which [the Court has] applied *Miranda*." *Id*. at 439. Thus, as a general rule, most interrogations which involve a police officer questioning a crime suspect at the police station in a police interview room are custodial interrogations that trigger the need for the *Miranda* warnings.

Neither the suspect's nor the police officer's subjective assessment of the situation is relevant to the inquiry.[6] *Stansbury*, 511 U.S. at 323 (the determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned); *Beckwith v. United States*, 425 U.S. 341 (1976) (the "in custody" requirement is not satisfied merely because police interviewed a person who was the "focus" of a criminal investigation); *see also Berkemer*, 468 U.S. at 420. Rather, this Court has set forth an objective test, which focused on the facts known both to the suspect and the officer at the time of the challenged questioning, to determine whether a suspect was "in custody." *Berkemer*, 468 U.S. at 442.[7]

[6] Despite the clear directive of this Court in *Stansbury* and its progeny that the subjective intent of the suspect has no bearing on the "in custody" determination of *Miranda*, ironically (and inconsistent with their own arguments on the objective test for custody), both Petitioner and the Solicitor General have relied on Respondent's testimony during cross-examination where he acquiesced to the prosecutor's suggestion that his conversation with Comstock was "low-key" and "friendly" as evidence that Michael was not in custody. Pet. Br. 38, SG. Br. 27, J.A. 437-439. Many clearly custodial interrogations, e.g., the questioning of suspects who have been arrested and are in handcuffs, are "low-key" and "friendly." That does not mean, however, that the suspect is not in custody. Furthermore, it is clear in this case that Comstock's "low-key" approach was part of an intentional design to elicit incriminating information. This would be exactly the approach the interrogation manuals would call for when dealing with a juvenile. Comstock's mild-mannered reassuring approach, combined with her comments which clearly implied that Michael was not criminally responsible since he did not know what was going to happen, would be highly effective in securing an incriminating statement.

[7] Petitioner argues that this Court has considered only whether objective "external" factors amount to restraint on freedom of movement associated with a formal arrest, and that the ultimate objective

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This objective test has been labeled a "reasonable person" test which requires the court first to define the circumstances surrounding the interrogation, and then to ask whether a reasonable person in the defendant's shoes would have felt he or she was not at liberty to "terminate the investigation and leave."[8] *Thompson*, 516 U.S. at 112. "The relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, 468 U.S. at 442; *Stansbury*, 511 U.S. at 324. For the reasons discussed below, respondent's juvenile status, the fact that he was essentially transferred from his parents' custody into police custody, and other factors, were relevant to both parts of the *Thompson* equation: the totality of the circumstances surrounding the interrogation and the perceptions of a reasonable person being questioned under those circumstances.

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inquiry focuses on "external" indicia of arrest. Pet. Br. 29, 31, 34, 36. If what petitioner means by "external" are those facts known or apparent to the suspect and the officer, then respondent agrees. However, if petitioner uses "external" to mean only the "physical" indicia of arrest, then this limited inquiry is contrary to this Court's concerns as expressed in *Miranda*: "Again, we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented." *Miranda,* 384 U.S. at 448.

[8] Petitioner seemingly disputes that this is the correct standard. "[T]his Court has *sometimes* described the 'in custody' determination as a 'reasonable person test' . . . But . . . the Court's references to a "reasonable person" were intended to explain why the interrogating police officer's subjective intention did not control the "custody" determination, and that any use of the "reasonable person" language was not meant to alter the ultimate objective inquiry that focused on external indicia of arrest." Pet. Br. 31. Petitioner plainly misunderstands the clearly established law; the reasonable person test is fundamental to the ultimate objective inquiry. *Thompson*, 516 U.S. at 112.

1. A Court Cannot Constitutionally Ignore Objective Circumstances Known to the Police Which Go Directly to the "In-Custody" Determination.

This Court's jurisprudence requires police officers to determine whether to give the *Miranda* warnings by assessing the known facts and circumstances of the individual being investigated and then placing themselves in that person's shoes assuming, of course, that the perceptions of the person before them are "reasonable." This necessarily requires the officer to consider objective factors known to her in assessing whether that person is "in custody" for *Miranda* purposes.

Objective relevant facts which this Court has held are relevant to the custody inquiry include: the location of the questioning, whether the interrogation was police-dominated, whether the surroundings were familiar, whether the defendant came to the place of questioning voluntarily, whether the person was informed that he was not under arrest, the length of the interview, whether police disclosed that the person being interrogated was a suspect, the use of physical contact or physical restraint, and whether the person was ultimately allowed to leave.[9]

[9] *Orozco v. Texas*, 394 U.S. 324, 325-27 (1969) (Defendant interrogated in own bed, in familiar surroundings, but he was still in custody because the officer testified that he was under arrest at the time of the questioning); *Beckwith*, 425 U.S. at 347 (Defendant questioned at his home in familiar surroundings) *Oregon v. Mathiason*, 429 U.S. at 493-94 (Defendant, not in custody, voluntarily came to police station, was immediately informed he was not under arrest, was interviewed for only one-half hour, was allowed to leave the police station without hindrance); *Beheler*, 463 U.S. 1121 (Defendant, not in custody,

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Facts which this Court has determined are *irrelevant* to the custody determination include: the length of time between the commission of crime and police questioning (*Beheler*, 436 U.S. at 1125); *un*disclosed police knowledge about the defendant or an unarticulated plan to arrest the suspect and an officer's false statements about finding fingerprints at scene. *Mathiason*, 429 U.S. at 495-96.

This Court has routinely stressed the relevance of objective facts known by both the police and the suspect at the time of the interrogation. For example, in the interrogation context, which is also an objective standard, this Court has made clear that where an officer has knowledge concerning a particular individual, that knowledge should be considered in the totality of the circumstances. *Rhode Island v. Innis*, 446 U.S. 291, 302 n.8 (1980) ("Any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response from the suspect"). Just this term, in *United States v. Banks*, __ U.S. __, 124 S. Ct. 521 (2003), this Court held, in the Fourth Amendment context, that facts known to the police are relevant in determining what a reasonable officer would think under the circumstances.

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voluntarily accompanied police to station, was specifically told he was not under arrest, was permitted to return home after the interview); *Berkemer*, 468 U.S. at 421-22, 441-42 (questioning suspect whose was not in custody, conducted in public, atmosphere substantially less police-dominated than station house, at traffic stop usually brief, no restraints comparable to formal arrest, and no reason to believe a traffic stop would not be temporary).

The reason for this rule is self-evident, the failure to consider facts known to law enforcement allows the police to exploit vulnerable suspects.

Examination of the objective relevant facts which have been considered by this Court in the past, and which were actually known to Detective Comstock in this case, demonstrates that Michael was "in custody" for *Miranda* purposes at the time of his interrogation. Respondent did not voluntarily come to the police station; instead, he was brought there by his parents upon police demand. He was then escorted into a police interrogation room in the station house. Michael's parents were precluded from attending the interrogation. He was a seventeen-year-old alone with an armed police officer, so the surroundings were police-dominated.[10] The surroundings were unfamiliar to Michael, who had never been arrested or been in an interrogation room before.[11] The police unequivocally communicated to respondent that he was a "suspect."[12] Michael was not informed that he was not under arrest or that he was free to leave.[13] The tape-recorded interview

[10] Curiously, the Solicitor General argues that despite being alone in an interrogation room in a police station with an armed homicide detective, the atmosphere of respondent's interview was not "police dominated." S.G. Br. 27. Considering all the facts of this case, that position is untenable.

[11] "Many of the psychological ploys discussed in *Miranda,* capitalize on the suspect's unfamiliarity with the officers and the environment." *Minnesota v. Murphy*, 465 U.S. 420, 433 (1984).

[12] A police officer's subjective view that an individual is a suspect, if disclosed, is relevant to how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her "freedom of action." *Stansbury*, 511 U.S. at 324-26.

[13] *Beheler,* 463 U.S. at 1122; *Mathiason*, 429 U.S. at 495.

took over two hours, and the questioning was accusatory in tone with repeated pressure by Comstock for Michael to tell the "truth" as she viewed the "truth" based on her purported investigation to date.[14] J.A. 101-102. While petitioner makes much of the fact that Michael was allowed to leave following the interrogation, he did not know that "going in." Michael was only told he would be permitted to leave *after* he provided incriminating statements to Officer Comstock.

Furthermore, Comstock knew at the time she summoned Michael to the police station via his parents that he was a seventeen-year-old high school student living with his parents. Presumably, she also knew that he had no experience with law enforcement (since he had no prior record), and thus had never been in an interrogation room at the station house. Comstock also knew that Michael wanted his parents to attend the interrogation, and she obviously knew that Michael's parents wanted to be with him in the interrogation room. She also knew that she had blocked their attendance.

In determining that respondent was not "in custody," the state court found that since respondent was not told he could not leave until he told the truth, and that he was not subjected to intense and aggressive tactics, a reasonable person would have felt free to leave. Pet. App. C17. However, a number of the most salient facts noted above were totally ignored, by the state court in determining whether Michael was "in custody."

[14] *Beheler*, 463 U.S. at 1122; *Mathiason*, 429 U.S. at 495.

In fact, the state court completely ignored that Comstock directly involved Michael's parents in the transfer of custody of Michael from his parents to the police at the station house. This Court has acknowledged in the context of the Fourth Amendment that juveniles, unlike adults, are always in some form of custody. Juveniles are never at complete liberty to go about their business and, when not in the custody of their parents, are always in someone else's temporary custody. *Schall v. Martin*, 467 U.S. 253, 265 (1984); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995); *New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985). Although custody for Fifth Amendment purposes is somewhat different than custody for Fourth Amendment purposes, juvenile status is certainly relevant to whether a person in the juvenile's position would feel at liberty to leave. This is particularly true where, as in this case, the juvenile submits to a claim of lawful authority after watching his parents submit to that same authority. *See*, *e.g.*, *J.J.C.*, 689 N.E.2d 1172, 1180 (Ill. App. Ct. 1998) ("When a juvenile's parents are present [at the station house], request to confer with their child, and are effectively refused by law enforcement authorities, the presumption arises that the juvenile's will is overborne.") Here, Michael observed Comstock summarily reject his parents' request to go with him into the interrogation room. He also knew his parents submitted to Comstock's authority both by bringing him to the station at her request and by not failing to challenge her refusal to allow them to be present during the interrogation. Furthermore, Comstock never told Michael that he was not under arrest or that he was free to go prior to escorting him into the interrogation room, but instead told him that when they were done she would escort him back to his parents. Thus, it was known to both Michael and to Comstock that

Michael had been transferred from his parents' custody into hers.[15]

2. The Objective "Reasonable Person" in Respondent's Case Was a Reasonable Seventeen-Year-Old in His Position At the Time of the Interrogation.

Petitioner argues that a "reasonable person in the suspect's position" is always a reasonable adult, even where it is known and apparent to the interrogating officer that the person being interrogated is a juvenile.[16]

[15] The Solicitor General argues that any ambiguity about whether respondent was legally required to attend the interrogation "was dispelled upon the arrival of respondent and his parents at the station, when Comstock explicitly sought and received the parents 'permission for [her] to interview their son.'" S.G. Br. 25-26. However, from Michael's point of view, the fact that Detective Comstock asked his parents whether she could interrogate him (and that they said yes) would only have solidified his perception that he had no choice but to answer Comstock's questions. Custody looks at the world from the point of view of the person who is being interrogated, not the point of view of his parents. "The relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Stansbury*, 511 U.S. at 324 (quoting *Berkemer*, 468 U.S. at 442).

[16] The federal courts at appeal have consistently held that *Miranda* and its progeny requires officers to consider facts actually known to them at the time of questioning in deciding whether the administration of the *Miranda* warning is necessary. *United States v. Ozuna*, 170 F.3d 654, 659 (6th Cir. 1999) (court considered perception of a reasonable person with language difficulties); *United States v. Erving L*, 147 F.3d 1240, 1247-48 (10th Cir. 1998) (court considered a reasonable juvenile in the defendant's position.); *United States v. Chalan*, 812 F.2d 1302, 1307 (10th Cir. 1987) (court considered the defendant's adherence to tribal custom in the custody analysis.); *United States v. Beraun-Panez*, 812 F.2d 578, 580-81 (9th Cir. 1987) (court considered status as an alien in reasonable person analysis.); *United States v. Wauneka*, 770 F.2d

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Petitioner and the Solicitor General argue that consideration of age is irrelevant to "in custody" determinations[17] since it would improperly convert the "in custody" test from an objective test into a subjective test like the one employed for voluntariness determinations.[18] Pet. Br. 29, 37-38; S.G. Br. 10-11, 17. As will be discussed in more detail below, that is not correct.[19]

Consideration of juvenile status does not convert an objective test into a subjective test. Juvenile status is not a "peculiar mental or emotional condition" that would serve to destroy the objective nature of the test. Moreover, contrary to petitioner's position, a reasonable juvenile standard would not "require[ ] law enforcement to calibrate their actions to account for how they might be perceived by an "unreasonable" person with a juvenile's age and experience." Pet. Br. 37. Rather, it is most often,[20]

1434, 1438-39 (9th Cir. 1985) (court considered that defendant was only 18 years old.).

[17] It is ironic that although Detective Comstock used respondent's youth to her advantage in securing an incriminating statement, the government argues that youth should be irrelevant to custody determinations. Pet. Br. 29; S.G. Br. 10.

[18] The voluntariness of a confession is determined by a subjective test which focuses on whether a *particular* suspect's will was overborne by coercive police activity. *Dickerson*, 530 U.S. at 444 (emphasis added).

[19] Making youth irrelevant to the custody determination, and thus making every child a reasonable adult, would effectively ignore whether a suspect was 17, 14, 10 or even 6 years old. That simply is absurd. It cannot be reasonably argued that, had all the other circumstances remained the same except for the fact respondent was only ten years old, that the appropriate reasonable person standard would be that of a reasonable adult.

[20] It was not the case here, and rarely will it be true, that exigent circumstances exist during post-offense station house interrogation of a

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and as was true here, age is an objectively knowable fact, and known to the officer at the time of questioning. The law has long given controlling weight to juvenile status in innumerable legal contexts, including interrogation because it creates a vulnerability repeatedly noted by this Court as requiring additional care and concern in police citizen interactions.[21] Consideration of juvenile status in the reasonable person inquiry would not take into account the particular child's or police officer's subjective assessment of the situation, nor their peculiar states of mind. Nor would it require the police to anticipate the "frailities or idiosyncracies of every person whom they question." Pet. Br. 32. Instead, it is simply a matter of calibrating the correct objective standard against which to assess the circumstances surrounding the interrogation. This objective test asks how a reasonable person – in this case how a reasonable seventeen-year-old – brought to the police station by his parents, at the insistence of the police, and

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suspect. Therefore, the burden on police officers to determine the age of a suspect will be negligible. Once a suspect has been brought in for questioning, his or her age is generally known.

[21] *See Stein v. New York*, 364 U.S. 156, 185-86 (1953) (characteristics of the accused relevant in determining voluntariness of a confession include the accused's age), *overruled on other grounds by Jackson v. Denno*, 378 U.S. 368 (1964). In *Haley v. Ohio*, 332 U.S. 596 (1948), this Court established the legal principle that juveniles are, in general, more susceptible to police coercion than adults; as such, due process demands that a defendant's juvenile status be taken into consideration when determining the proper procedural safeguards that attach to a custodial interrogation. *Id.* at 599-601. During the last half century, this Court has consistently reaffirmed this principle. *See, e.g.*, *Withrow v. Williams*, 507 U.S. 680, 693 (1993); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *In re Gault*, 387 U.S. 1, 45 (1967); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

then separated from them against his will and his parent's will, would have assessed his freedom to leave.[22] In short, consideration of juvenile status in the reasonable person inquiry in no way converts the objective test adopted by this Court for custody determinations into a subjective inquiry.[23]

This Court recognized recently, in a Fourth Amendment custody analysis, that all circumstances surrounding the encounter – including juvenile status – should be taken into account in assessing whether police conduct communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. *See Kaupp v. Texas*, __ U.S. __, 123 S. Ct. 1843, 1846 (2003) (taking into account that suspect was "a seventeen year old boy" as a "probative circumstance" in determining whether the juvenile had been seized for purposes of the Fourth Amendment.) Although this Court has distinguished between custody for Fifth Amendment

[22] The Solicitor General asserts that "nothing in the record indicates why respondent's parents were not present in the interview room" and that "there are no state court findings on the subject." SG. Br. 27. A fair review of the record belies this assertion. It is, and has always been, undisputed that Michael's parents were refused permission to be with him during the interrogation. Pet. for Cert. 3, Pet. App. A8, B3; J.A. 185-186, 190. In fact, it was accepted by the trial court and uncontradicted by the government at the pre-trial suppression hearing that not only did Michael's parents request to be present, Michael himself asked something to the effect of "Can't someone come in with me or be here with me?" J.A. 185-186, 190-194.

[23] The concept of a reasonable child is recognized in other areas of the law, e.g., torts, in applying the reasonable person standard. *Daniels v. Evans*, 224 A.2d 63 (N.H. 1966) "Minors are entitled to be judged by standards commensurate with their age."; *see also* Holmes, *The Common Law* 107-09 (1881).

purposes and custody for Fourth Amendment purposes,[24] the tests are similar and the reasons which compel the consideration of juvenile status is the same.[25] When considering the circumstances surrounding an interrogation, a reviewing court must acknowledge that a seventeen-year-old is still considered a juvenile. There is no principled reason why age should not also be acknowledged as relevant to Fifth Amendment custody determinations.

To equate a juvenile interacting with police officers with an adult interacting with police is to completely divorce reason from the "reasonable" person inquiry. It is this common understanding of a reasonable person, or in this case, a reasonable seventeen-year-old, which has led all courts that have squarely addressed the issue to recognize juvenile status is relevant to the "in custody" determination, either as a factor under the totality of circumstances test, or by way of modification to the reasonable person standard.[26] State courts have also acknowledged the

[24] *See Berkemer*, 468 U.S. at 437, 441-42 (holding that a person could be "seized" or "detained" for purposes of a traffic stop, but not "in custody" for purposes of *Miranda*).

[25] "A seizure of a person within the meaning of the Fourth and Fourteenth Amendments occurs when, 'taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " *Kaupp*, 123 S. Ct at 1845 (quoting *Florida v. Bostick*, 501 U.S. 429, 437 (1991)). "The test is an objective one." *Id*. at 1847.

[26] *See In re Jason W.T.*, WI App. 241, ¶ 15 (Wis. Ct. App. 2002) (ruling that in applying the objective test, it is appropriate to ask what a reasonable child in the defendant's circumstances would understand his situation to be.); *In re Jorge D*., 43 P.3d 605, 608-09 (Ariz. 2002) (ruling that objective test applies to juvenile context, "but

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with additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement"); *Evans v. Montana*, 995 P.2d 455 (Mont. 2002) (finding that a 'reasonable fourteen-year old being questioned under the circumstances would surely not have felt free to leave.'); *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999) (applying "reasonable juvenile" standard to determine whether the defendant "would have believed that he was in custody at the time of the interrogation at the police station"); *In re L.M.*, 993 S.W.2d 276, 288-89 (Tex. Crim. App. 1999) (surveying the large number of state courts that have included age as a factor in an "in custody" determination and adopting a rule that "expressly provides for consideration of age under the reasonable-person standard established [by the U.S. Supreme Court] in *Stansbury*") (emphasis added); *State v. D.R.*, 930 P.2d 350, 353 (Wash. Ct. App. 1997) (applying standard of "whether a 14 year old in [the defendant's] position would have reasonably supposed his freedom of action was curtailed" and holding that in the context of school interrogations, special precautions should be taken to ensure that children understand that they are not required to stay or answer questions asked of them by a police officer.) (quotations omitted); *In re Joshua David C.*, 698 A.2d 1155, 1162 (Md. Ct. Spec. App. 1997) (stating that a juvenile in-custody determination "must consider additional factors, such as the juvenile's education, age, and intelligence"); *In re Doe*, 948 P.2d 166, 173 (Idaho Ct. App. 1997) (ruling that objective test applied to in-custody determination for Miranda purposes, "but with additional elements . . . including the child's age, maturity and experience with law enforcement"); *People v. T.C.*, 898 P.2d 20, 25 (Colo. 1995) (en banc) (ruling that "the circumstances of the interrogation, including the length of the interrogation and the fact that it involved an eleven-year-old, would lead a reasonable person in [the defendant's] situation to feel that he had no choice but to stay and listen to the officer") (quotations omitted); *In re Loredo*, 865 P.2d 1312, 1315 (Or. Ct. App. 1993) (constructing test "whether a reasonable person in child's position – that is, a child of similar age, knowledge and experience, placed in a similar environment – would have felt required to stay and answer all of [the officer's] questions"); *In re Robert H.*, 194 A.D.2d 790, 599 N.Y.S.2d 621, 623 (1993) ("Under the circumstances, we conclude that a reasonable 15-year-old, in the position of Robert, would not have believed he was free to leave the scene."); *Commonwealth v. A Juvenile*, 521 N.E.2d 1368, 1370 (Mass. 1988) ("On the question whether the juvenile was in custody, the test is how a reasonable person in the juvenile's position

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absence of parents as a relevant factor under the totality of circumstances. *See*, *e.g.*, *In re Doe*, 948 P.2d 166, 173 (Idaho Ct. App. 1997) (ruling that objective test applied to in custody determination for *Miranda* purposes, "but with additional elements . . . including . . . the presence of a parent or other supportive adult"); *State v. J.Y.*, 623 So. 2d 1232, 1234 (Fla. Dist. Ct. App. 1993) (considering "juvenile's age" and "lack of a parent being present" as relevant factors under the totality of circumstances).

If Michael Alvarado had been an adult, he would not have been bound to abide by a housemate's agreement to have him come to the police station. However, because respondent was a minor, and the housemates were his parents, he did not have that freedom of choice.[27] Once at

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would have understood his situation."); *People v. Savory*, 435 N.E.2d 226, 230 (Ill. App. Ct. 1982) (stating that "[n]umerous factors" are relevant to the in custody determination, including "the age, intelligence and mental makeup of the accused"). In addition to these state court decisions several federal courts of appeals have also recognized the age of the suspect in making the decision whether *Miranda* warnings were necessary to prevent Fifth Amendment violations. In *United States v. Erving L.*, 147 F.3d at 1247-48, the Tenth Circuit expressly assessed the facts through the eyes of a "reasonable juvenile" in determining the suspect was not in custody. Likewise, in *United States v. Wauneka*, the Ninth Circuit considered the fact that the suspect was eighteen years old at the time of interrogation in deciding that a *reasonable person in the suspect's shoes* would not have felt free to leave. 770 F.2d 1434, 1438-39 (9th Cir. 1985).

[27] "A parent is the natural guardian of the person of his child and is entitled to custody and control." 10 Witkin, Summary of California Law § 91 (9th ed. 1989); The authority of a parent only ceases on any of the following: (a) The appointment, by a court, of a guardian of the person of the child; (2) the marriage of the child; or (3) the child attaining age of majority. Cal. Fam. Code § 7505; *see also* Cal. Welf. & Insts. Code § 601 [persons under the age of 18 years who persistently or habitually refuse to obey the reasonable and proper orders or directions of his or

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the police station, if respondent had been an adult, the police would not have asked the person who brought him there for permission to question him; they would have asked him, and he would have been able to decide for himself whether to grant or (attempt to) refuse that permission. If Michael had been an adult, the police refusal to allow his companion(s) to accompany him to the room for questioning would have been unsurprising and inconsequential to him, but because he was a minor and the companions were his parents, that refusal was highly significant as a practical and legal matter.[28] It cannot seriously be suggested that when Detective Comstock began questioning Michael, a reasonable seventeen-year-old in his situation would have thought he was sitting in the interview room as a matter of choice, free to change his mind and go home at any time.

In sum, the state court's failure to take this widely recognized understanding of the reasonable juvenile into account in its custody analysis in Michael's case was inconsistent with the longstanding objective reasonable person standard.

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her parents is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.]

[28] Petitioner argues that under the Ninth Circuit holding, respondent's "age and experience would have been irrelevant had he been interviewed less than six months later." Pet. Br. 38. However, six months later, Comstock likely would not have called his parents to get them to bring him to the station, nor would she have needed "their permission" to interrogate him. The circumstances surrounding the interrogation likely would have been markedly different. Futhermore, any legal test, legal line drawing, or "bright line" rule will have cases which fall close to the line on one side or the other. The fact that a case is close does not mean that the rule is a bad rule or should be discarded.

C. Law Enforcement's Duties Under *Miranda* Will Remain the Same.

Petitioner argues that requiring officers to take into consideration a suspect's age and experience in deciding whether to give *Miranda* warnings will "unduly hamper" law enforcement. It is difficult to see how this is the case. In every interrogation, an officer must think about how his or her actions impact upon the suspect's assessment of her freedom to leave. That is especially true in this case where, the officer makes a deliberate, tactical decision to conduct a station house interrogation of a known suspect without administering the *Miranda* warnings.[29] The age of a suspect, particularly as known or exploited by the police, is relevant to whether a suspect waived his or her *Miranda* rights and to the voluntariness determination. Since the suspect's age is already a factor in the ultimate admissibility of any statement, it is not a heavy burden on law enforcement to utilize a reasonable juvenile standard in assessing custody for *Miranda* purposes, especially when the officer knows the suspect is a juvenile.

Petitioner also asserts that factoring a juvenile's age and experience into the "custody" determination would have the inevitable consequence of muddying *Miranda*'s otherwise relatively clear waters. Pet. Br. 39. However, the

[29] It cannot be seriously disputed that Officer Comstock chose to proceed without giving the *Miranda* warnings to enhance her chances of securing an incriminatory statement. This was not a spontaneous or road side encounter. Comstock was an experienced, trained police officer who had summoned a known suspect in a homicide case to the police station for the purpose of interrogating him. It is readily apparent that she chose not "*Mirandize*" Michael for fear he would invoke either his right to silence or his right to counsel.

Miranda custody inquiry is often one of "shades and degrees." *Withrow v. Williams*, 507 U.S. 680, 712 (1993) (O'Connor J., concurring in part and dissenting in part). Requiring officers to ask how a reasonable juvenile would assess his interaction with police does not make the water any "muddier," it merely requires that the law be logical, and that the correct reasonable person standard be utilized. Additionally, clarity cannot be allowed to eclipse fairness. Petitioner's argument necessarily means that any child or adolescent, no matter what his age, would be held to the standard of a reasonable adult in assessing custody. Clarity which leads to absurd results should not be countenanced.

Petitioner further contends that "An overly broad *Miranda* rule for juveniles would potentially exclude free and voluntary confessions deserving of the highest credit." Pet. Br. 9. This argument proves too much, as it would require this Court to overrule *Miranda* itself. The same argument can be made any time a confession is excluded because it was obtained in violation of *Miranda*. However, "a free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt . . . but a confession forced from the mind by flattery of hope, or by torture of fear, comes so questionable a shape . . . that no credit ought to be given it." *Dickerson*, 530 U.S. at 433. Finally, an unduly narrow view of custody for juveniles would mean that those most in need of the protections afforded by *Miranda* would be denied its protections in cases where no reasonable child, teenager, or adolescent would feel free to leave.

II. THE DECISION OF THE CALIFORNIA COURT OF APPEAL WHICH DETERMINED THAT RESPONDENT WAS NOT IN CUSTODY AT THE TIME HE WAS INTERROGATED WAS BOTH CONTRARY TO AND AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THIS COURT.

A state court decision is contrary to clearly established federal law if it "applies a rule that contradicts the governing law set forth in [Supreme Court] cases" or if it "confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result different from [Supreme Court] precedent." *Williams v. Taylor*, 529 U.S. 362, 405 (2000). A state court decision involves an unreasonable application of clearly established federal law if the state court "identifies the correct governing legal principle from this Court's decisions, but unreasonably applies that principle to the facts of the petitioner's case." *Id.* at 413; *see also Wiggins v. Smith*, 123 S. Ct. 2527, 2534 (2002). In other words, a "federal court may grant relief when a state court has misapplied a 'governing legal principle' to a 'set of facts different from those of the case in which the principle was announced.'" *Wiggins*, 123 S. Ct. at 2535 (internal citations omitted) (quoting *Lockyer v. Andrade*, 538 U.S. 63, ___, 123 S. Ct. 1166, 1175 (2003)).[30] In short, the relevant

[30] As will be discussed subsequently, a state court decision is also unreasonable if it "either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Williams*, 529 U.S. at 407 (O'Connor J., concurring).

inquiry is whether the state court decision was "objectively unreasonable." *Williams*, 529 U.S. at 409.[31]

A. The California Court of Appeal Unreasonably Failed to Consider the Totality of the Circumstances Identified in this Court's Prior Decisions.

As has been previously discussed, determining whether a suspect is in custody involves a two step analysis: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson*, 516 U.S. at 112-13. "The first inquiry . . . is distinctly factual. . . . The second inquiry, however, calls for application of the controlling legal standard to the historical facts. This ultimate determination . . . presents a 'mixed question of law and fact'. . . ." *Id.*

"In determining whether an individual was in custody, a court must examine *all* of the circumstances surrounding the interrogation, ... " *Stansbury*, 511 U.S. at 322. (emphasis added); *see also Thompson*, 516 U.S. at 112; *Berkemer*, 468 U.S. at 442. Circumstances which this Court has identified as particularly relevant to the custody inquiry include: where the interrogation occurred, at the police station or in a more public location, *Berkemer*, 468 U.S. at 437-39; how the suspect came to the place of

[31] A state court decision can be both "contrary to" and an "unreasonable application of" clearly established federal law under § 2254(d)(1). *Williams*, 529 U.S. at 413.

interrogation, did the suspect come voluntarily, *Mathiason*, 429 U.S. at 495; whether the suspect was affirmatively told that he was not under arrest, *id.*; *Beheler*, 463 U.S. at 1122; how long the interrogation lasted, *Beheler*, 463 U.S. at 1122; and, whether weapons were brandished. *Orozco v. Texas*, 394 U.S. 324 (1969).[32]

The state court completely ignored most of these important factors, and myopically determined that Michael was not in custody because he was "not told he could not leave until he told the truth," and because "he was not subjected to the intense and aggressive tactics" Pet. App. C17. But, in this case, one of the most important aspects to properly (and reasonably) decide whether Michael was in custody was how he came to the police station to be interviewed in the first place. Officer Comstock contacted his parents, informed them that she "needed" to speak with him, and enlisted the custodial authority of Michael's parents to secure his presence at the police station. He did not, as was the case in *Mathiason* and *Beheler,* voluntarily come to the police station. On arrival at the station, Comstock did not ask Michael if he would agree to be interviewed, she asked his parents.[33] They agreed to the interrogation. Thus he came to the police station in the custody of his parent, and he was then transferred from

[32] In some cases, the interrogating officer's knowledge that the person being interrogated is a suspect is also a relevant factor. The officer's knowledge or belief goes into the totality of circumstances hopper if it is "conveyed to the individual being questioned." *Stansbury*, 511 U.S. at 325.

[33] Furthermore, Michael was not given a statement to review or sign indicating that he voluntarily agreed to be interviewed by the police.

his parents' custody to police custody. Furthermore, his request, and his parents' request, that his mother and father be allowed to accompany him into the interview room were summarily rejected by Officer Comstock.[34] Additionally, Michael was never told that he was not under arrest prior to the interrogation. The state court unreasonably focused on the converse: that Michael was not told that he could not leave. However, a key consideration in both *Matthiason* and *Beheler* was the fact that the suspect was affirmatively told that he was not under arrest. *Matthiason*, 429 U.S. at 495; *Beheler*, 463 U.S. at 1125. Finally, Michael was informed that he was a suspect and he was interrogated for more than two hours.[35]

These circumstances, clearly identified in this Court's prior decisions, are undoubtedly critical in correctly setting the scene, but they were not given any meaningful consideration by the California Court of Appeal in its

[34] In *Berkemer*, 468 U.S. at 442 n.36, this Court contrasted the suspect in that case's situation with that of the suspect in *United States v. Schultz*, 442 F. Supp. 176 (1977). In *Schultz*, an adult suspect was held to be in custody for *Miranda* purposes, after being denied permission to call his mother. This Court used the "cf." signal, which, in context, indicates that the custody determination in *Schultz* was correct.

[35] It is also significant that the interview was tape recorded. This could only have served to add to its official air. Furthermore, Michael had virtually no prior experience with law enforcement and certainly none with police interrogation techniques: *Cf. Murphy*, 465 U.S. at 433 ("[M]any of the psychological ploys discussed in *Miranda* capitalize on the suspect's unfamiliarity with the officers and the environment. Murphy's regular meetings with his probation officer should have served to familiarize him with her and her office and to insulate him from psychological intimidation that might overbear his desire to claim the [Fifth Amendment] privilege").

determination that respondent was not "in custody" for *Miranda* purposes.[36] In sum, the state court failed to consider the appropriate totality of the circumstances, but rather selectively focused on a few factors which supported its conclusion. As was true in *Wiggins*, this makes the state court's decision more of a "*post-hoc* rationalization" rather than an "accurate description" of the relevant facts. *Wiggins*, 123 S. Ct. at 2538. The failure to take into account a number of circumstances deemed highly probative in this Court's established custody decisions renders the state court decision objectively unreasonable.[37]

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[36] The Ninth Circuit decision correctly identified the totality of the relevant circumstances, including those ignored or given no weight by the state court:

> Detective Comstock contacted Michael's mother at her place of employment and informed her that the police "needed" to speak with her son. Both parents then accompanied Michael, who was then only 17 years old, to the Sheriff's station so that he could be interviewed. Despite the fact that Michael had never been questioned by police before, his parents were refused permission to be present during the interview. Michael was then escorted to an interrogation room, where Detective Comstock conducted a two-hour interview about the events of September 22, 1995. Despite the fact that Michael initially denied any knowledge or involvement in a crime, Comstock repeatedly pressured Michael to tell the "truth" as purportedly disclosed by the three notebooks of notes she had compiled from her interviews with alleged witnesses to the crime. Well into the course of the interview, after a substantial amount of incriminating material had been obtained, Michael was told that he could use the phone. Only at the end of the interview did Comstock inform Michael that he was free to go.

Alvarado v. Hickman, 316 F.3d 841, 844 (9th Cir. 2002).

[37] For example, in the two cases from this Court holding that station house interrogation by the police was not custodial, the person questioned – an adult in both instances – (1) went to the station voluntarily; (2) was affirmatively told he was not under arrest; and (3) was interviewed for less than a half hour. *Beheler*, 463 U.S. at 1122;

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B. The California Court of Appeal Utilized an Erroneous Reasonable Person Standard Thus Rendering that Decision Contrary to and Unreasonable Application of Clearly Established Federal Law.

The second prong of the custody determination requires a reviewing court to ask whether a reasonable person in the suspect's position would have believed that he or she was at liberty to terminate the interrogation and leave. *Thompson*, 516 U.S. at 113-14; *Berkemer*, 468 U.S. at 442. Because the relevant totality of the circumstances was materially incomplete, the application of the legal principle to the circumstances of this case was necessarily wrong and contrary to, and an unreasonable application of, clearly established federal law. In this case, considering all the facts relevant to the totality of the circumstances, no reasonable person–adult or juvenile–would have believed he was free to leave.

The California Court of Appeal compounded the error when it invoked and relied on the wrong legal standard, applying the "reasonable adult" test. The use of an incorrect legal standard was both contrary to, and an unreasonable application of, clearly established federal law.[38]

Mathiason, 429 U.S. at 495-96. In this case, Michael did not come to the station voluntarily, he was brought by his parents at the interrogating officer's request. Second, he was not told he was not under arrest prior to the interrogation. Third, the interview lasted two hours.

[38] The Ninth Circuit held that the state court was unreasonable in failing to consider that Michael was a juvenile:

> The omission of any mention of Michael's juvenile status (and Comstock's knowledge of it) by the California Court is mysterious because Alavarado raised this precise argument both at trial and on

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Due to the universally recognized relevancy of juvenile status in *every other* legal context, the state court's refusal to consider Michael Alvarado's juvenile status as relevant to either the totality of the circumstances, or the calibration of the correct reasonable person in making the *Miranda* custody determination, was objectively unreasonable. There is simply no principled justification for a *Miranda* custody exception to the rule that juvenile status "matters." The custody calculus under *Miranda* does not occupy such a special place in this Court's jurisprudence compelling such an unwarranted and unreasonable rule, a rule which effectively treats a twelve-year-old and an adult alike.

The notion that it was an "open question" whether to consider juvenile status in the "custody" determination for purposes of requiring *Miranda* warnings prior to police questioning, or that such a notion was so new that it broke new legal ground or imposed new and unforeseen obligations on the states, is simply untenable. In Section I of this brief, we have explained the state courts' unanimity on this point. That unanimity, recognized by the Ninth Circuit in this case, puts to rest the argument that the

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appeal. There is no support for the argument that his juvenile status finds no mention in the California decision because of Michael's failure to raise and preserve the issue in every state forum. Michael's trial attorney argued that because Michael's parents brought him to the station at the behest of the police who refused them permission to be present at the interview; because Michael was a juvenile who had never before been arrested; and because Alvarado was interrogated for over two hours in an interrogation room where he was a suspect, a reasonable person in his position would not have felt free to leave.

J.A. 185-197; *Alvarado*, 316 F.3d at 850.

panel's decision imposes a new and unforeseen burden on the states. *See Alvarado v. Hickman*, 316 F.3d 841, 851 n.5 (9th Cir. 2002) ("When we survey the landscape of state court decisions, we note that every jurisdiction that has squarely addressed the issue has ruled that juvenile status is relevant to the 'in custody' determination, either as a factor under the totality of circumstances test, or by way of modification to the reasonable person standard"). The uniformity of state court decisions, the decisions of this Court in similar contexts and the generally understood meaning of the reasonable person, all make clear that the state court's refusal to consider Michael's juvenile status was unreasonable. *Williams*, 529 U.S. at 397 (Virginia Supreme Court was unreasonable in failing to consider the "totality of the available . . . evidence").[39]

[39] State court decisions and the decisions of lower federal court are not entirely irrelevant in federal habeas proceedings. Rather, they remain useful (and accepted by most circuits) in the task of identifying the content and scope of rules clearly established by the Supreme Court. *See*, *e.g.*, *Van Tran v. Lindsey*, 212 F.3d 1143, 1154 (9th Cir.), *cert. denied*, 121 S. Ct. 340 (2000) ("there is still a role for circuit law in habeas cases: we still look to our own law for its persuasive authority in applying Supreme Court law; however, only the Supreme Court's holdings are binding on the state courts and only those holdings need be 'reasonably' applied"); *Richardson v. Bowersox*, 188 F.3d 973, 978 (8th Cir. 1999), *cert. denied*, 529 U.S. 1113 (2000) ("In determining whether a state court's decision involved an unreasonable application of clearly established federal law, it is appropriate to refer to decisions of the inferior federal courts in factually similar cases"); *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877 (3d Cir.) (en banc), *cert. denied*, 528 U.S. 824, 890 (1999) ("in certain cases it may be appropriate to consider the decisions of inferior federal courts as helpful amplifications of Supreme Court precedent").

C. Because The California Court Of Appeal's Decision Was Both "Contrary To" And Involved An "Unreasonable Application Of" Clearly Established Federal Law, This Court Need Not Decide Whether The United States Court of Appeals Was Also Correct Under The "Unreasonable Extension" Prong of § 2254(d)(1).

Petitioner spends a great deal of time addressing whether the "extension of legal principles" analysis is governed by, or indeed, even finds a home in § 2254(d)(1). But, for the most part, the extension debate is tangential to the proper resolution of this case. While the Ninth Circuit did ground its decision on an "extension of legal principles" analysis, that analysis is not essential to its judgement that Michael Alvarado was in custody. What is dispositive, however, is that the California Court of Appeal decision was both contrary to and an unreasonable application of this Court's well established custody decisions in: (1) refusing to consider several critical factors in the identification of the totality of the circumstances; and (2) refusing to consider Michael's juvenile status in the reasonable person inquiry. Therefore, this Court need not consider Petitioner's argument that the Court of Appeals erroneously extended the law since it was the state court which failed to identify what the law is (and has been) and to reasonably apply the established law to the relevant facts. The state court decisions, under any standard, was objectively reasonable.

Under the guise of attacking the Ninth Circuit's decision, Petitioner repeatedly misstates the relevant § 2254(d)(1) question before this Court. For example, Petitioner asserts that the panel "extrapolat[ed] a rule" in

deciding this case. Pet. Br. 7. But, as has been previously established, no rule is being "extrapolated" at all. Petitioner also uses the term "later emerging legal doctrine." *Id.* Again, no "later emerging doctrine" is necessary to properly resolve this case.

Petitioner also argues that "an extension of a legal principle to a novel setting is not an application . . . because 'application' and 'extension' have different meanings." Pet. Br. 7-8. This is faulty semantics in the service of faulty reasoning. "Application" plainly subsumes "extension." Section 2254(d)(1) anticipates that lower federal courts will apply established rules to situations not explicitly covered by this Court's decisions, *i.e.*, to state court judgments which are not "on all fours" with one of this Court's decisions. Even in the new rule context governed by the *Teague v. Lane*, 489 U.S. 288 (1989) retroactivity analysis, this Court was aware that lower courts would have to reasonably determine whether the case before them required the application of a new rule or merely the proper extension or application of a recognized old one. This Court noted:

> Referring to *Teague*, we reiterated that, in general, a case announces a "new rule" when it breaks new ground or imposes a new obligation on the States or the Federal Government. *Penry*, 492 U.S., at 314. . . . A new decision that explicitly overrules an earlier holding obviously "breaks new ground" or "imposes a new obligation." *In the vast majority of cases*, however, where the new decision is reached by an *extension* of the reasoning of previous cases, the inquiry will be more difficult.

Butler v. McKellar, 494 U.S. 407, 412-13 (1990) (emphasis added).

Similarly, petitioner argues that because the "extension" of "clearly established federal law" *itself* constitutes a "new rule" as that term is described and defined in this Court's *Teague* jurisprudence, it is improper to apply the "new rule" to Michael Alvarado's case under both the non-retroactivity doctrine and § 2254(d)(1). This bootstrapping argument evaporates under close scrutiny. If a federal court's faithful attempt to follow the guidelines of § 2254(d)(1) by applying clearly established federal law to an analogous context is inevitably met with a challenge that such application constitutes a "new rule" in violation of the non-retroactivity doctrine of *Teague*, then there would be, for all practical purposes, no habeas corpus review. Such an approach would preclude a federal court from granting habeas relief to a state prisoner if the claim could be distinguished from prior precedent on any conceivable legal or factual basis. But adjudication according to prevailing law necessarily means more than perfunctorily applying holdings in previous cases to virtually identical fact patterns. Indeed, even in Justice Harlan's view, adjudication according to prevailing law demands that a court exhibit "conceptual faithfulness" to the principles underlying prior precedents, not just "decisional obedience" to cases on all fours with a decision of this Court. *Desist v. United States*, 394 U.S. 244, 266 n.5 (1969) (Harlan, J., dissenting).

D. This Court And The Federal Circuits Have Adopted The Extension Analysis Under 28 U.S.C. § 2254(d)(1) Because There Is A Logical And Legal Equivalence Between The Terms "Application" And "Extension" Recognized By This Court.

In finding the state court's decision in this case to be unreasonable under AEDPA, the Ninth Circuit utilized the "extension" analysis referenced by this Court in *Williams v. Taylor*. In *Williams*, this Court stated that the construction in *Green v. French*, 143 F.3d 865, 870 (4th Cir. 1998), of the unreasonable application clause was "generally correct." *Williams*, 529 U.S. at 407. That construction held that the unreasonable application clause allowed a federal habeas court to examine whether the state court "either unreasonably extended a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Id.* Had this Court found such a construction anathema to its understanding of the scope of § 2254(d)(1), it surely would have said so. In *Ramdass v. Angelone*, 530 U.S. 156, 166 (2000), Justice Kennedy's plurality opinion recapitulated the *Williams* formulation of the "extension" language without comment or dissent. It appears, therefore, that this Court has adopted the extension test as part of its settled § 2254(d)(1) unreasonable application law.

Additionally, all of the federal courts of appeal have referenced, even if in some instances they have not formally adopted, the "extension" prong of the "unreasonable

application" clause of § 2254(d)(1).[40] That is for good reason since there is little semantic or logical difference between

[40] *See, e.g., Kibbe v. Dubois,* 269 F.3d 26, 36 (1st Cir. 2001); *Mountjoy v. Warden,* 245 F.3d 31, 35 (1st Cir. 2001) (citing *Williams v. Taylor*, 529 U.S. 362 (2000)) ("[A] state court decision may be set aside as an 'unreasonable application' of federal law . . . 'if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply' "); *Kennaugh v. Miller*, 289 F.3d 36, 44-45 (2d Cir. 2002) ("A state court determination is reviewable under AEDPA if the state decision unreasonably failed to extend a clearly established, Supreme Court defined, legal principle to situations which that principle should have, in reason, governed."); *Williams v. Price*, 343 F.3d 223, 229 (3d Cir. 2003) (citing *Williams*) ("Accordingly, to hold that the right recognized in *McDonough* is not available to a defendant in a state criminal case would be an 'unreasonabl[e] refus[al] to extend that principle to a new context where it should apply' "); *Green*, 143 F.3d at 869-70; *Penry v. Johnson*, 215 F.3d 504, 507-08 (5th Cir. 2000) (citing *Williams*) ("[a] state court unreasonably applies Supreme Court precedent if . . . it 'unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply' "), *rev'd on other grounds*, 532 U.S. 782 (2001); *McMeans v. Brigano,* 228 F.3d 674, 684 (6th Cir. 2000) (same); *Anderson v. Cowan*, 227 F.3d 893, 896 (7th Cir. 2000) (same); *Armstrong v. Bertrand*, 336 F.3d 620, 624 (7th Cir. 2003) (citing *Williams*) ("if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply"); *Carter v. Kemna*, 255 F.3d 589, 592-593 (8th Cir. 2001) (citing *Williams*) ("[a] state court decision involves an unreasonable application of Supreme Court precedent when the state court unreasonably refuses to extend a legal principle to a new context where it should apply"); *Van Tran v. Lindsey*, 212 F.3d 1143 (9th Cir. 2000); *Valdez v. Ward*, 219 F.3d 1222, 1229-30 (10th Cir. 2000); *Carter v. Ward*, No. 02-6307 (10th Cir. Oct. 21, 2003) (same); *Bottoson v. Moore*, 234 F.3d 526, 531 (11th Cir. 2000) (same); *but see Hawkins v. Alabama*, 318 F.3d 1302 (11th Cir. 2003) (noting that the law is unsettled).

determining whether a state court has unreasonably applied clearly established law to an analogous context in which it reasonably should find purchase, and determining whether a state court has unreasonably extended (or failed to extend) clearly established law to that same context. "Applying" the law to an analogous context in the proper case is plainly synonymous with "extending" (*e.g.*, *applying* it to its full or proper *extent*) in the same context. This Court has suggested that a reasonable "application" of an old rule to a new context is the legal equivalent of "extending" it. One must presume that the equivalence bestowed upon the terms by this Court found expression in § 2254(d)(1), and in the cases that have construed an equivalence between the terms "apply" and "extend." *See*, *e.g.*, *Saffle v. Parks*, 494 U.S. 484, 488 (1990); *Graham v. Collins*, 506 U.S. 461, 467 (1993); *Butler*, 494 U.S. at 412-13; *see also Mackey v. United States*, 401 U.S. 667, 695 (1971) (Harlan, J., concurring in judgments in part and dissenting in part). It is not unreasonable, therefore, to assume that the words "apply" and "extend" are used synonymously in interpreting § 2254(d)(1) without doing violence to the meaning or the intent of AEDPA. In sum, AEDPA is no barrier to habeas corpus relief because the California Court of Appeal incorrectly formulated the correct governing legal rules and unreasonably applied the governing legal rule to the facts of Michael Alvarado's

case.[41] The state court decision was, under any construction of § 2254(d)(1) objectively unreasonable.

[41] In *Lockyer v. Andrade*, 538 U.S. 63 (2003), this Court concluded that Ninth Circuit precedent endorsing a "clear error" view of § 2254(d)(1)'s "unreasonable application" prong was incorrect. The panel in this case employed the "clear error" analysis under then binding Ninth Circuit precedent. *See Alvarado*, 316 F.3d at 854-855. While the panel in this case did not have the benefit of *Lockyer* at the time it decided this case, *Lockyer* has no impact upon the soundness of the result in this case because the panel also unquestionably found that the state court decision was unreasonable. *Id.* ("After identifying these relevant circumstances, it is simply unreasonable to conclude that a reasonable 17-year-old, with no prior history of arrest or police interviews, would have felt that he was 'at liberty to terminate the interrogation and leave')."

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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