

No.

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IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL YARBOROUGH, Warden of California
State Prison—Los Angeles County, *Petitioner*,

v.

MICHAEL ALVARADO, *Respondent*.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. This Court has held that the test to determine if a person is "in custody" to require warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), is an objective test (i.e., whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest). *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)); *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). The question presented is:

Whether, in applying the objective test for a "custody" determination under *Miranda*, a court must consider the age and experience of a person if he or she is a juvenile.

2. Under 28 U.S.C. § 2254(d), a federal court may not grant habeas corpus relief to a state prisoner on a claim adjudicated on its merits in State court unless the adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States." In *Williams v. Taylor*, 529 U.S. 362, 408 (2000), this Court explicitly left open how "extension of legal principle" cases should be treated under § 2254(d)(1). The question presented is:

Whether a state court adjudication can be deemed an "objectively unreasonable" application of clearly established Supreme Court precedent, for purposes of § 2254(d), because it declines to "extend" the rule of a Supreme Court precedent to a new context.

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v.

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PETITION FOR WRIT OF CERTIORARI

Michael Yarborough, Warden of California State Prison—Los Angeles County, at Lancaster, California (hereafter the Warden), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION OR JUDGMENT BELOW

The opinion of the Court of Appeals is reported as *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002), *amended* (2003), and is reproduced in pages A1 to A30 of the Appendix (App.) to this petition. The order of the District Court denying habeas corpus relief is unreported. App. B1-B10. The opinion of the California Court of Appeal is certified for partial publication and reported as *People v. Soto*, 74 Cal. App. 4th 1099, 88 Cal. Rptr. 2d 688 (1999). App. C1-C26.

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit Court of Appeals granting habeas corpus relief was amended and entered on May 11, 2003. The Court of Appeals denied the Warden's motion for rehearing with suggestion for rehearing en banc on May 11, 2003. The jurisdiction of this Court is timely exercised under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

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

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

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

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States

STATEMENT OF THE CASE

After midnight on September 22, 1995, respondent Michael Alvarado, Paul Soto, and others went to a shopping mall in Santa Fe Springs, California. They saw a truck driven by Francisco Castaneda. One person in the group approached Mr. Castaneda and obtained one dollar from him. In Alvarado's

presence, Soto said, "Let's jack," meaning to steal the truck. Soto and Alvarado approached Mr. Castaneda's truck. Soto walked to the driver's side of the truck, while Alvarado walked towards the passenger door of the truck. A gunshot and a scream followed. Mr. Castaneda was found dead from a bullet wound.

Approximately one month after the crimes, Los Angeles County Sheriff's Detective Cheryl Comstock left word at Alvarado's house and with his mother at her workplace that the Sheriff's Department needed to speak with Alvarado. Alvarado's mother told Detective Comstock that Alvarado's father would bring Alvarado to the Sheriff's station so he could be interviewed. Both parents went with Alvarado to the Sheriff's station and gave their permission for Detective Comstock to interview him. Alvarado was seventeen years old at the time of the interview. His parents were apparently refused permission to be present during the interview.

The interview, conducted exclusively by Detective Comstock, lasted approximately two hours, from 12:30 p.m. to 2:30 p.m. She never told Alvarado that he was under arrest and did not give him *Miranda* warnings. Near the end of the interview, Detective Comstock indicated that Alvarado would be allowed to return home after the interview.

Detective Comstock expressed disbelief when Alvarado's initial version of events omitted any mention of the crimes. Alvarado repeated his statement that he had seen no shooting. Detective Comstock informed Alvarado that she had witnesses who said "quite the opposite," and that she had "three notebooks full of notes." She urged him to tell the truth. She never told him that he would have to remain in the Sheriff's station until he told the truth.

Eventually, Alvarado gave further details of the crime, including his role in hiding the gun after the murder. He identified Soto as the shooter. Near the end of the interview, Alvarado was offered the use of a telephone to make a call, but he declined. Shortly thereafter, he was also offered an

opportunity to take a bathroom break or water break, which he also declined. He returned home after the interview.

In December 1995, Detective Comstock told Alvarado's parents that a warrant had been issued for Alvarado's arrest and Alvarado turned himself in at the Sheriff's station. He was charged with Mr. Castaneda's murder and attempted robbery.

Prior to trial, Alvarado moved to suppress evidence of his statements to Detective Comstock. The focus of his argument was the failure of the detective to interview him in the presence of his parents. The prosecution filed an opposition to the motion, arguing that *Miranda* advisements were not required because Alvarado was not in custody during the interview. Following a hearing on the motion, the trial court denied Alvarado's motion to suppress his statements. His statements during the interview were admitted into evidence at trial.

Alvarado was convicted of murder and attempted robbery and was sentenced to state prison for an indeterminate term of fifteen years to life. He appealed his convictions. The California Court of Appeal rejected his claim that his statements were erroneously admitted by the trial court in violation of *Miranda*. App. C11-C17. After setting forth the circumstances surrounding Alvarado's interview (App. C12-C17), the California Court of Appeal stated, "We are satisfied that a reasonable person under the circumstances in which Alvarado was questioned would have felt free to leave." App. C17. The court reasoned that Alvarado was not told he could not leave until he told the truth, and was not subjected to intense and aggressive tactics. The court noted that although Detective Comstock made it clear to Alvarado that she disbelieved his early, exculpatory, version of the events on the night of the murder, she did not fabricate evidence or subject him to intense pressure. The court concluded that Alvarado was not in custody during his interview with Detective Comstock, and therefore no *Miranda* warnings were required. App. C17. Alvarado's petition for review in the California Supreme Court was denied.

Alvarado filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Central District of California. The petition claimed as a ground for relief that his statements were obtained in violation of *Miranda*. The magistrate judge issued a report recommending that the petition be denied with prejudice. The magistrate judge found that Alvarado was not in custody and that his statements were properly admitted. The magistrate judge concluded that the California court's rejection of Alvarado's claim therefore was not contrary to, or an unreasonable application of, clearly established federal law as determined by this Court. App. B1-B8. The District Court filed an order adopting the findings, conclusions, and recommendations of the magistrate judge, and entered a judgment denying the petition and dismissing it with prejudice. App. B9-B10.

Alvarado appealed. In a published decision, the Ninth Circuit held that a defendant's juvenile status alters the "in custody" determination for *Miranda* purposes. App. A1-A30. The Ninth Circuit stated that Supreme Court cases have held that a juvenile is more susceptible to police coercion during a custodial interrogation than would be a similarly-situated adult. App. A17-A18. The court reasoned that, because the age and circumstances of a juvenile defendant are relevant factors in determining whether a confession or a waiver of constitutional rights are voluntarily given, there was "no principled reason why similar safeguards . . . would not apply equally to an 'in custody' determination." App. A18-A19. The Ninth Circuit held that because the state court failed to address how Alvarado's juvenile status affected the "in custody" determination, the state court unreasonably failed to "extend" a clearly established legal principle to a new context. App. A22-A26. The court further held that, considering the additional factors of Alvarado's age, his lack of prior arrest history, his inexperience with law enforcement officers, the parental involvement to arrange for his interview with the Sheriff's Department, and the Sheriff's Department's refusal to let his parents attend the interview in the objective

determination of custodial status, Alvarado was "in custody." App. A20, A25-A26. The Ninth Circuit also held that the improper admission of the incriminating statements by the state court had a substantial and injurious effect on the subsequent jury verdict. The Court of Appeals reversed the District Court's denial of the habeas petition and remanded the case for the district court to issue a conditional writ of habeas corpus directing that Alvarado be released from custody unless the state began trial proceedings within 120 days of the issuance of the mandate. App. A30.

The Warden's petition for rehearing with suggestion for rehearing en banc in the United States Court of Appeals for the Ninth Circuit was denied on February 11, 2003. App. A1, A5.

On February 12, 2003, the Warden filed a motion to stay the issuance of the mandate in the Ninth Circuit. The Ninth Circuit has not yet ruled upon the motion, and the mandate has not issued.

REASONS FOR GRANTING THE WRIT

In this case, the Ninth Circuit made the controversial judgment that a particular person's age and "juvenile status," factors logically relevant in determining whether an accused's will had been overborne by coercion, are somehow also vital considerations in objectively determining whether alleged restraints upon the person's freedom of movement approximate that of a full-blown arrest. In doing so, the Ninth Circuit recognized that it was extending a rule from this Court's "voluntariness" precedents into the different context of "custody." And, consequently, the Ninth Circuit also resolved the controversial question of whether, under the restrictions on habeas corpus relief imposed by § 2254(d), a state court's decision may be deemed an "unreasonable application" of "clearly established law" under this Court's precedents if it does not anticipate such an extension of this Court's precedents into a novel setting. There is a split in the circuits on these points. And the Ninth Circuit's extension of precedent will

exert a significant impact not only upon the state courts, but also upon law enforcement officers, who will now be faced with the prospect that identical police conduct will not be deemed "custody" for some individuals, but will be for others.

I.

The Ninth Circuit has decided an important and recurring issue regarding "custody" for *Miranda* purposes that conflicts with decisions of this Court, has caused a split among the circuit courts of appeals, and has placed a significant burden on law enforcement.

For the first time by a circuit court of appeals, the Ninth Circuit held that, in determining whether a juvenile was in custody for *Miranda* purposes, a court must consider the person's "juvenile status" (i.e., the juvenile's age and experience). App. A18-A20, A23-A24. The decision below creates a new standard for an "in custody" determination for the purposes of *Miranda* when the person questioned is a juvenile, in that it conflicts with this Court's decision in *Berkemer v. McCarty*, 468 U.S. 420 (1984), and has caused a split among the circuit courts of appeals. It also has a significant impact upon law enforcement.

1. *Miranda* warnings are required only when a person interviewed by the police is "in custody." *Stansbury v. California*, 511 U.S. 318, 322 (1994); *Miranda*, 384 U.S. at 444. In determining whether a person was "in custody" at a particular time, "the only relevant inquiry is how a reasonable [person] in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. at 442. Although the circumstances of each case must certainly influence a determination of whether a person is "in custody" for *Miranda* purposes, the ultimate inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (citing *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)).

This Court has held that the reasonable person test is an objective test which does not "place upon the police the burden of anticipating the frailties or idiosyncracies of every person whom they question." *Berkemer*, 468 U.S. at 442, n.35 (quoting *People v. P.*, 21 N.Y.2d 1, 9-10, 233 N.E.2d 255, 260 (1967)). Considering a juvenile's age and experience is contrary to the objective reasonable person test for indicia of arrest set forth by this Court's cases. Age and experience are individual characteristics and do not directly reflect the degree of restraint on freedom of movement. Indeed, in *People v. P.*, 233 N.E.2d 255, which has been quoted with approval by this Court (see *Berkemer*, 468 U.S. at 442 n.35), the court applied a reasonable person test to a sixteen-year-old defendant, *not* a modified test. *People v. P.*, 233 N.E.2d at 256, 260-61.

The Ninth Circuit arrived at its contrary conclusion by failing to recognize the fundamental difference between an "in custody" determination for *Miranda* purposes and a determination of the voluntariness of a confession or a waiver of constitutional rights. See App. A18-A19. Unlike in the objective reasonable person test for an "in custody" determination, age is logically relevant in determining the voluntariness of a confession or a waiver of constitutional rights. See *Stein v. New York*, 346 U.S. 156, 185-86 (1953) (characteristics of the accused relevant to determining the voluntariness of a confession include the accused's age, sophistication, prior experience with the criminal justice system, and emotional state), *overruled on other grounds by Jackson v. Denno*, 378 U.S. 368 (1964); *North Carolina v. Butler*, 441 U.S. 369, 374-75 (1979) (question of voluntary waiver of constitutional rights is determined on the "particular facts and circumstances of the case, including the background, experience, and conduct of the accused."). Age is a relevant factor for determining the voluntariness of a confession or a waiver of constitutional rights because both inquiries analyze the accused's state of mind, i.e., whether the accused voluntarily gave the confession or voluntarily waived constitutional rights.

An "in custody" determination for *Miranda* purposes, however, is different from a determination of whether a confession or waiver of constitutional rights was voluntarily given. "Juvenile status" is not relevant to an "in custody" determination, because the *ultimate* inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *California v. Beheler*, 463 U.S. at 1125. The purpose of an "in custody" determination is to gauge whether there is an indicia of custody associated with formal arrest to require law enforcement officers to give *Miranda* warnings. Consequently, the person's state of mind has no substantial relevance to the indicia of custody. The Ninth Circuit failed to recognize this fundamental difference, and in essence has converted the "in custody" determination for *Miranda* purposes into the same test for determining whether a confession is voluntary.

2. Moreover, the decision below directly conflicts with the decision of at least one other circuit, and is at least inconsistent with decisions of two other circuits. In *United States v. Erving L.*, 147 F.3d 1240, 1248 (10th Cir. 1998), the defendant, a thirteen-year-old juvenile, argued on appeal that "[a] child with [E.L.'s] characteristics would reasonably feel unable to leave or to request that officers leave under the circumstances in which [E.L.] found himself." The Tenth Circuit held that in evaluating whether the defendant was in custody, only the restraint imposed by the officers was a relevant consideration. The Tenth Circuit held that the defendant's particular traits were irrelevant under the objective standard unless the officers were aware of the particular traits *and* those traits influenced the actions of the officers. *Id.* at 1247-48. The Tenth Circuit stated:

Finally, to the extent that E.L.'s brief can be read as inviting this court to reach out to create a dual track for "in custody" determinations by making such determinations objective when the suspect is an adult but subjective when the suspect is a child, we decline

the invitation. Not only is it unwise to place such a burden on law enforcement, but such an approach is directly contrary to the approach adopted by the Supreme Court.

Erving L., 147 F.3d at 1248 (citing *Berkemer*, 468 U.S. at 442 n.35).¹

The decision below is also at least inconsistent with decisions of the Sixth and Eighth Circuits. In *United States v. Macklin*, 900 F.2d 948, 949-51 (6th Cir. 1990), the Sixth Circuit held that a reasonable person test, rather than a subjective test, is appropriate to determine whether a mildly retarded suspect was in custody. In so holding, the Sixth Circuit cited to this Court's opinion in *Berkemer*, 468 U.S. at 442 n.35. *Macklin*, 900 F.2d at 951. In *United States v. J.H.H.*, 22 F.3d 821, 831 (8th Cir. 1994), the fourteen-year-old defendant argued that his police interview was a custodial interrogation and his statement was coerced by threats. The Eighth Circuit's detailed analysis rejecting the claim does not address or analyze the "juvenile's status," (i.e., age and experience). See *id.*

3. Resolution of this conflict among the circuits is vital because law enforcement agencies are presently subject to inconsistent mandates as to when *Miranda* warnings must be given to juveniles. This issue will necessarily arise whenever juveniles are questioned by law enforcement officers. The

1. The Ninth Circuit asserted that *Erving L.* modified the objective standard to account for the defendant's status, based on language in *Erving L.* "Given these facts, a reasonable juvenile, in E.L.'s position. . ." App. A14 (emphasis in original). *Erving L.* does contain the words "reasonable juvenile" in one sentence. But, read in its entirety, *Erving L.* rejects a modification of the reasonable person test. Indeed, the Tenth Circuit concludes the "in custody" analysis with a clear indication that it used a reasonable person test: "Because a reasonable person in E.L.'s position would not have believed that he was subjected to the functional equivalent of formal arrest, this court reverses the district court's conclusion that E.L. was in custody for *Miranda* purposes." *Erving L.*, 147 F.3d at 1248.

Ninth Circuit's decision below introduces an element of uncertainty because not all similarly-situated persons will be considered to be in custody. It is, of course, a goal of this Court's jurisprudence on *Miranda* custody to provide effective guidance to law enforcement. See *Thompson v. Keohane*, 516 U.S. 99, 115 (1995). Moreover, the practical consequence of the Ninth Circuit's decision is that law enforcement officers will not be able to determine whether *Miranda* rights should be given to a juvenile unless they can divine the age and experience of the juvenile. This is an unwarranted burden to place upon law enforcement officers. See *Berkemer*, 468 U.S. at 442 n.35.

II.

The circuit Courts of Appeals are divided over whether a State court adjudication can be deemed "objectively unreasonable" for purposes of 28 U.S.C. § 2254, where the State court declines to "extend" the rule of a Supreme Court precedent to a new context.

Under 28 U.S.C. § 2254(d), a federal court may not grant habeas corpus relief to a state prisoner on a claim adjudicated on its merits in state court unless the adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States." In *Williams v. Taylor*, 529 U.S. 362, 402-13 (2000), this Court stated:

The Fourth Circuit also held in *Green* [*v. French*, 143 F.3d 865 (4th Cir. 1998)] that state-court decisions that unreasonably extend a legal principle from our precedent to a new context where it should not apply (or unreasonably refuse to extend) a legal principle to a new context where it should apply should be analyzed under § 2254(d)(1)'s "unreasonable application" clause. See 143 F.3d at 869-70. Although that holding may perhaps be correct, the classification does have some

problems of precision. Just as it is sometimes difficult to distinguish a mixed question of law and fact from a question of fact, it will often be difficult to identify separately those state-court decisions that involve an unreasonable application of a legal principle (or an unreasonable failure to apply a legal principle) to a new context.

Williams, 529 U.S. at 408. This Court concluded, however, that, “[t]oday’s case does not require us to decide how such ‘extension of legal principle’ cases should be treated under § 2254(d)(1).” *Id.* at 408-09. Following this Court’s decision to decline to address how such “extension of legal principle” cases should be treated, the circuits now have split on the proper treatment of such cases.

In the decision below, the Ninth Circuit recognized that this Court “has not had a specific occasion to analyze how a defendant’s juvenile status may alter an ‘in custody’ determination.” App. A22. And, the court acknowledged that its analysis “involves the extension of the principle that juvenile status is relevant to the conduct of a custodial interrogation to the further determination whether a defendant is, in fact, ‘in custody.’” App. A23. Despite the foregoing, the Ninth Circuit held that, under 28 U.S.C. § 2254(d)(1), it was objectively unreasonable for the state court to have failed to extend consideration of a defendant’s juvenile status from the context of voluntary confession and waiver of constitutional rights to the context of “in custody” determination for *Miranda* purposes. App. A22-A26.

Pointing to the decision below, the Eleventh Circuit in *Hawkins v. Alabama*, 318 F.3d 1302, 1306 n.3 (11th Cir. 2003), criticized the Ninth Circuit’s requirement that state courts extend Supreme Court precedent. In a sophisticated analysis, the Eleventh Circuit noted that the word “extend” does not appear in § 2254(d). The court stated, “‘Extend’ can mean different things at different times.” *Id.* (citing *Brumley v. Wingard*, 269 F.3d 629 (6th Cir. 2001) and *Alvarado*, 318 F.3d

841). The Eleventh Circuit delineated one meaning of “extend”:

Extend might only mean to apply the ratio decidendi of Supreme Court decisions fully and completely (and not in some crabbed way) so that the rule of law covers new and different facts and circumstances as long as the new facts and circumstances -- objectively reasonably viewed -- are materially or, put differently, substantially the same that were in the mind of the Supreme Court when it laid down the rule.

Id. at 1306 n.3. The *Hawkins* court reasoned that this meaning of “extend” caused no conflict between 28 U.S.C. § 2254(d) and a rule requiring state courts to extend Supreme Court precedent. *Id.*

Disagreeing with the Ninth Circuit’s interpretation of “extend,” the Eleventh Circuit explained the meaning of “extend” as the Ninth Circuit had used it in the decision below:

But “extend” in a different sense, can mean to “widen the range, scope, area of application of (a law, operation, dominion, state of things, etc.); to enlarge the scope of meaning of (a word).” 5 *The Oxford English Dictionary* 595 (2d ed. 1989). See generally *Alvarado*, 2002 WL 31829483 at *9, at —. In this sense, we see an impermissible conflict with Congress’s expressed intent in [28 U.S.C. § 2254(d)].

Id. The *Hawkins* court explained as follows:

We reject that Congress intended for [28 U.S.C. § 2254(d)’s] protection for state court decisions to be conditioned on the state court’s widening, or enlarging, the rules made by Supreme Court decisions. To widen the scope of or to enlarge Supreme Court rules is not to

follow "clearly established" Supreme Court law, but is to innovate.

Id. The Eleventh Circuit held that under 28 U.S.C. § 2254(d), a state court is not required to predict that the Supreme Court might widen its rule if the Supreme Court were faced with new and substantially different circumstances. *Id.*

Here, in contrast, the Ninth Circuit required the state court to predict that this Court would widen its rules if faced with new and substantially different circumstances.^{2/} The Ninth Circuit noted in the decision below that the state court had adhered to this Court's objective test in determining "custody" for *Miranda* purposes. App. A7 (stating that the California Court of Appeal identified the correct legal standard for making an "in custody" determination). The Ninth Circuit, however, then held that under § 2254(d)(1), it was objectively unreasonable for the state court to have failed to extend consideration of a defendant's juvenile status from the context of voluntary confessions and waiver of constitutional rights to the context of "in custody" determinations for purposes of *Miranda*, an entirely different area of law. App. A26.

The decision below presents, precisely, the problem of whether a state court decision may be condemned as objectively unreasonable for failing to extend a legal principle to a new context under § 2254(d)(1). *See Williams v. Taylor*, 529 U.S. at 408. Given the conflict between the circuits, guidance from this Court in how to treat such "extension of legal principle" cases under 28 U.S.C. § 2254(d)(1) is now necessary.

2. Although not raised by the Warden below, it was also improper for the Ninth Circuit to grant federal habeas relief in the decision under *Teague v. Lane*, 489 U.S. 288, 299-300 (1989), which is similar to the "clearly established" portion of § 2254(d). *Williams*, 529 U.S. at 412. It has been recognized that *Teague* prohibits extending a prior decision into a "novel setting." *See Stringer v. Black*, 503 U.S. 222, 228 (1992).

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: May 9, 2003

Respectfully submitted,

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