No. 08-680

In the Supreme Court of the United States

STATE OF MARYLAND, PETITIONER

v.

MICHAEL BLAINE SHATZER, SR.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether *Edwards* v. *Arizona*, 451 U.S. 477 (1981), requires the suppression of voluntary statements that respondent made after receiving *Miranda* warnings because, two-and-a-half years earlier, respondent, who was incarcerated on a separate crime and was later released back to the general prison population, had invoked his Fifth Amendment right to counsel when a different law enforcement official sought to question him about the same offense.

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INTEREST OF THE UNITED STATES

This case concerns the appropriate application of *Edwards* v. *Arizona*, 451 U.S. 477 (1981)—more particularly, the question whether the protection offered by that decision terminates at some point. The Court's resolution of that question will affect the conduct of federal criminal investigations and trials. The United States therefore has a significant interest in the Court's disposition of this case.

STATEMENT

1. In 2003, a social worker contacted the Hagerstown Police Department about allegations that respondent had ordered his three-year-old son to perform fellatio on him. On August 7, 2003, Detective Shane Blankenship met with respondent at the Maryland Correctional Institute–Hagerstown, where respondent was

serving a sentence for an unrelated crime. Detective Blankenship's written report states that he advised respondent of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and that respondent stated that he did not want to talk about the allegations without an attorney present. Detective Blankenship terminated the interview, and the investigation was closed that same year. Pet. App. 2a-3a, 85a.

In February 2006, the social worker made another referral after respondent's son made more specific allegations. The case was assigned to Detective Paul Hoover because Detective Blankenship was on leave. Detective Hoover knew of the previous investigation, but he did not know respondent had requested an attorney during the August 7, 2003 interview. In the meantime, respondent had remained incarcerated, though he had been transferred to the Roxbury Correctional Institute, where he was confined in the general population. Pet. App. 3a & n.1, 86a, 95a.

On March 2, 2006, Detective Hoover and the social worker met with respondent at the Roxbury Correctional Institute. The interview, which lasted approximately 30 minutes, took place in a maintenance room that contained a desk and three chairs. Detective Hoover was not armed, and respondent was not handcuffed. Respondent expressed surprise at the renewed questioning and stated that he thought the investigation involving his son had been closed. Respondent told Detective Hoover that he had previously met with Detective Blankenship, but did not mention that he had requested an attorney during that meeting. Detective Hoover advised respondent of his *Miranda* rights, and respondent signed a form waiving them, including the right to have an attorney present during questioning. Respondent

denied the fellatio allegation, but admitted masturbating in front of his son. He also agreed to take a polygraph examination. Pet. App. 3a-4a, 86a-87a; 8/29/06 Tr. 22-23.

On March 7, 2006, Detective Shawn Schultz gave respondent another set of *Miranda* warnings and then conducted the polygraph examination. Detective Schultz concluded that respondent's answers indicated deception, and Detectives Hoover and Schultz interviewed respondent immediately afterwards in the same room that had been used on March 2, 2006. During that interview, respondent began to cry and stated: "I didn't force him. I didn't force him." Pet. App. 4a. At that point, respondent requested an attorney, and the detectives terminated the interview. *Ibid.*; 8/29/06 Tr. 25-29.

2. Respondent was charged with a number of offenses, including sexual child abuse. He moved to suppress his statements during the March 2, 2006 and March 7, 2006 interviews, arguing that they had been obtained in violation of *Edwards* v. *Arizona*, 451 U.S. 477 (1981). Pet. App. 4a-5a.

The trial court denied respondent's motion to suppress. Pet. App. 84a-98a. The court found that respondent had "freely and voluntarily waived his right to counsel [and] his right to remain silent" on March 2, 2006 and March 7, 2006, and that there had been "a break in custody for *Miranda* purposes" between the August 7, 2003 and the March 2, 2006 interviews. *Id.* at 95a. After a bench trial on stipulated facts, the trial court found respondent guilty of sexual child abuse and sentenced him to 15 years of imprisonment on that charge. *Id.* at 5a-6a.

3. The Court of Appeals of Maryland reversed and remanded for further proceedings. Pet. App. 1a-81a.

a. The majority stated that, "[u]nder *Edwards*, a suspect who expresses a desire to have counsel cannot be subject to further interrogation until counsel has been made available to him or her, unless the accused initiates further communication." Pet. App. 8a. The majority acknowledged that more than two-and-a-half years had elapsed between respondent's invocation of his right to counsel during the interview with Detective Blankenship and his express waivers of that right during the interviews with Detective Hoover, the social worker, and Detective Schultz. *Id.* at 21a. The majority concluded, however, "that the passage of time *alone* is insufficient to expire the protections afforded by *Edwards*." *Id.* at 27a.

The majority also rejected the State's argument that suppression was unwarranted because there was a "break in custody" between the August 7, 2003 and March 2, 2006 interviews. Pet. App. 28a-44a. The majority stated that "[a]ny 'break in custody' exception to *Edwards* * * * must mean something different than the test for determining custody for purposes of *Miranda* warnings," *id.* at 38a, and it held that any break-in-custody exception is categorically inapplicable to "an inmate who is subject to uninterrupted, continuous incarceration between the first invocation of the right to counsel and a second interrogation," *id.* at 42a.

b. Two judges dissented. Pet. App. 45a-81a. In their view, there were "at least two independent reasons" for declining "to apply the bright line rule of *Edwards* to [respondent's] case": (1) the "break in time of over two years"; and (2) the presence of "a non-pretextual break in custody." *Id.* at 46a (footnote omitted); see *id.* at 66a-78a.

The dissenters also argued that, under *Missouri* v. *Seibert*, 542 U.S. 600 (2004), respondent's statements during the March 2006 interviews would have been admissible even if Detective Blankenship had deliberately failed to give any *Miranda* warnings at all on August 7, 2003 and had obtained incriminating statements from respondent at that time. Pet. App. 50a-63a. In the dissenters' view, that fact made suppression especially "unwarranted," because here all of the officers had "act[ed] in good faith," respondent was given *Miranda* warnings at the beginning of each of the three interviews, and the officers immediately "honor[ed] [respondent's] assertion of *Miranda* rights" each time he invoked them. *Id.* at 62a. The dissenters also argued that the majority's decision would "discourage police from investigating new leads to older crimes if a suspect in those crimes already is incarcerated for other crimes." *Id.* at 80a.

SUMMARY OF ARGUMENT

The Court of Appeals of Maryland erred in holding that the Fifth Amendment requires suppression of respondent's warned and voluntary statements.

A. In *Edwards* v. *Arizona*, 451 U.S. 477 (1981), this Court held that "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Id.* at 484. The irrebuttable presumption of coercion that the Court announced in *Edwards* is a prophylactic measure designed to support the rules established in *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The *Edwards* rule thus should not extend more broadly than necessary to fulfill the purposes that motivated its

creation or to cases in which the benefits of the presumption would be outweighed by its substantial costs to the truth-seeking process.

B. This Court has suggested—and the lower courts have broadly held—that the *Edwards* presumption terminates when a suspect experiences a break in the custodial pressures that triggered it. A break-in-custody limitation on *Edwards* is also consistent with the facts and basic premises of this Court's previous cases, which have focused on the risk that continued detention for purposes of interrogation will degrade a suspect's ability to make a knowing and voluntary choice about whether to continue to assert his Fifth Amendment rights.

C. Respondent, although a prison inmate, experienced a break in custody when he returned from interrogation to the general prison population. Service of a prison sentence does not translate into continuous custody for purposes of either *Miranda* or *Edwards* because incarceration pursuant to a criminal conviction does not create the sort of coercive pressures that motivated those decisions. A contrary rule would create significant barriers to effective law enforcement by rendering an entire class of prison inmates—those who have validly invoked their Fifth Amendment right to counsel at any point during what may be a lengthy incarceration—effectively unapproachable for the remainder of their sentences. Because the record does not support a finding that respondent was subject to any restrictions beyond those generally accompanying prison life after he was returned to the prison population following the August 7, 2003 interview, the *Edwards* presumption ceased to apply at that point.

Any doubt that respondent experienced a break in custody for purposes of *Edwards* is eliminated by the

two-and-a-half year lapse between the end of the August 7, 2003 interview and the March 2006 interrogations. Because a prisoner who is serving a previously imposed sentence knows that he will remain incarcerated whether or not he confesses, a prolonged period during which no interrogation occurs will serve to dissipate the sort of coercive pressures on which *Miranda* and the cases following it are premised.

ARGUMENT

THE FIFTH AMENDMENT DOES NOT REQUIRE SUPPRESSION OF RESPONDENT'S MARCH 2006 STATEMENTS

This Court has made clear that the irrebuttable presumption of coercion that it announced in *Edwards* v. *Arizona*, 451 U.S. 477 (1981), is a prophylactic measure designed to protect and simplify administration of the Fifth Amendment's core prohibition against the admission of a defendant's compelled statements in a criminal prosecution. That presumption should cease to apply where (as here) a break in custody has occurred between a suspect's initial invocation of his Fifth Amendment right to counsel and the commencement of a second interrogation.

A. *Edwards* Establishes A Prophylactic Rule That Should Not Be Applied Where Its Purposes Are Not Served Or Where Its Benefits Do Not Outweigh Its Substantial Costs

1. The Fifth Amendment provides that "[n]o person shall * * * be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. As this Court has recognized, the Self-Incrimination Clause "provides only that a person shall not be *compelled* to give evidence against himself." *Michigan* v. *Tucker*, 417

U.S. 433, 448 (1974); see *Oregon* v. *Elstad*, 470 U.S. 298, 306-307 (1985) (same). Accordingly, some "sort of coercion, legal or factual" is a necessary predicate for any claim under that Clause. *Hoffa* v. *United States*, 385 U.S. 293, 304 (1966).

2. In *Miranda* v. *Arizona*, 384 U.S. 436 (1966), this Court concluded that custodial interrogation generates "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." *Id.* at 467. The Court also determined "that reliance on the traditional totality-of-the-circumstances test [to determine voluntariness] raised a risk of overlooking an involuntary custodial confession." *Dickerson* v. *United States*, 530 U.S. 428, 442 (2000).

Miranda thus held that, before conducting a custodial interrogation, the police must inform a suspect that he has the right to remain silent, to consult with counsel, and to have counsel provided if he cannot afford one. The police must also inform the suspect that, if he waives those rights and makes a statement, anything he says may be used against him in court. 384 U.S. at 467-473, 479. Failure to provide these warnings renders any resulting statements inadmissible during the prosecution's case in chief. *Ibid.*

In *Edwards*, the Court announced a "second layer of prophylaxis" for situations where a suspect invokes his Fifth Amendment-based right to have counsel present during custodial interrogation. *McNeil* v. *Wisconsin*, 501 U.S. 171, 176 (1991).[1] The Court held that such a

[1] The Sixth Amendment right to counsel is not at issue here. That right "does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information,

suspect "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards*, 451 U.S. at 484-485. *Edwards* further held that "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Id.* at 484.

3. The Court has stated that *Edwards* is "designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." *Michigan* v. *Harvey*, 494 U.S. 344, 350 (1990). It therefore constitutes supplementary protection to "ensure[] that any statement made in subsequent interrogation is not the result of coercive pressures." *Minnick* v. *Mississippi*, 498 U.S. 146, 151 (1990). The Court also has stated that *Edwards* "conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness, and implements the protections of *Miranda* in practical and straightforward terms." *Ibid.*

At the same time, the Court has emphasized the need to "consider the other side of the *Miranda* equation: the need for effective law enforcement." *Davis* v. *United States*, 512 U.S. 452, 461 (1994). "Admissions of guilt

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or arraignment." *McNeil*, 501 U.S. at 175 (internal quotation marks and citation omitted); see *Rothgery* v. *Gillespie County*, 128 S. Ct. 2578, 2581 (2008). The Sixth Amendment right to counsel is also "offense-specific." *Texas* v. *Cobb*, 532 U.S. 162, 168 (2001). When respondent invoked his right to counsel on August 7, 2003, no prosecution had been commenced with respect to the allegations of sexual misconduct involving his son.

are * * * essential to society's compelling interest in finding, convicting, and punishing those who violate the law," *Moran* v. *Burbine*, 475 U.S. 412, 426 (1986), and "the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good," *McNeil*, 501 U.S. at 181. As a result, the suppression of statements that may in fact be "wholly voluntary," *Michigan* v. *Mosley*, 423 U.S. 96, 100 (1975), imposes a "high cost to legitimate law enforcement activity," *Elstad*, 470 U.S. at 312. That is particularly so of the *Edwards* rule, which "has only a tangential relation to truthfinding at trial." *Solem* v. *Stumes*, 465 U.S. 638, 643-644 (1984).

The Court has carefully scrutinized whether the benefits of applying *Miranda* and its related doctrines in a particular situation are enough to warrant incurring their substantial costs. For example, the Court has held that a failure to administer the *Miranda* warnings does not render any resulting statement inadmissible for all purposes, see *Harris* v. *New York*, 401 U.S. 222, 226 (1971) (recognizing impeachment exception to *Miranda*), does not require the exclusion of evidence obtained as a result of such statements, see, *e.g.*, *United States* v. *Patane*, 542 U.S. 630 (2004) (holding that a failure to give *Miranda* warnings does not require suppression of physical fruits of voluntary statements); *Tucker*, 417 U.S. at 450-451 (declining to require suppression of the testimony of a third party whom the police first identified through the defendant's unwarned statements), and generally does not prevent the admission of subsequent warned statements, see *Elstad*, 470 U.S. at 308-309.

The Court has adopted the same approach with respect to the "corollary to *Miranda*[]" (*Arizona* v. *Roberson*, 486 U.S. 675, 680 (1988)) that it announced in

Edwards. In *Davis*, the Court declined "to create a third layer of prophylaxis" by "requir[ing] law enforcement officers to cease questioning immediately upon the making of an ambiguous or equivocal reference to an attorney." 512 U.S. at 459, 462. The Court acknowledged that its holding "might disadvantage some suspects who—because of fear, intimidation, lack of linguistic skills, or a variety of other reasons—will not clearly articulate" their desire not to be questioned without an attorney present. *Id.* at 460. But the Court concluded that a rule requiring the cessation of questioning on an ambiguous invocation "would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity." *Ibid.* (quoting *Mosley*, 423 U.S. at 102).

B. The *Edwards* Presumption Should Terminate When There Is A Break In *Miranda* Custody

Edwards is based on a "presum[ption]" "that if a suspect believes that he is not capable of undergoing [custodial] questioning without advice of counsel, then * * * any subsequent waiver that has come at the authorities' behest * * * is itself the product of the 'inherently compelling pressures' and not the purely voluntary choice of the suspect." *Roberson*, 486 U.S. at 681 (quoting *Miranda*, 384 U.S. at 467). This Court has suggested, and the lower courts have uniformly and correctly held, that the *Edwards* presumption should cease when a suspect experiences a break in the custodial pressures that gave rise to it in the first place. That conclusion is consistent with the facts and underlying premises of this Court's decisions in *Miranda*, *Edwards*, and subsequent cases.

1. In *McNeil*, this Court held that an accused's invocation of his Sixth Amendment right to counsel during a judicial proceeding does not constitute an invocation of the Fifth Amendment right to counsel that is the subject of the *Edwards* rule. See 501 U.S. at 173, 177-182; see note 1, *supra*. In "describ[ing] the nature and effects of * * * the *Miranda-Edwards* 'Fifth Amendment' right to counsel," the Court stated that the "presum[ption]" of involuntariness that it recognized in *Edwards* is based on the "assump[tion]" that "there has been no break in custody" between the two episodes of custodial interrogation. *Id.* at 177.

2. The decisions of the lower courts are in accord with this Court's statement in *McNeil*. As the court of appeals acknowledged, "[v]irtually every court that has considered this issue has held (or noted in *dicta*) that a break in custody permits the police to reapproach a suspect who had previously asserted his *Edwards* rights and to try to obtain a waiver." Pet. App. 29a (quoting Marcy Strauss, *Reinterrogation*, 22 Hastings Const. L.Q. 359, 386 (1995)); see *id.* at 17a n.6 (citing cases); see also *Kyger* v. *Carlton*, 146 F.3d 374, 380 (6th Cir.) (stating that "courts have unanimously" held that "*Edwards* does not * * * apply to suspects who * * * are not in continuous custody"), cert. denied, 525 U.S. 1028 (1998).

3. The consensus that the *Edwards* presumption terminates when there is a break in custody is consistent with the underlying premises of this Court's decisions. *Miranda* was based on the "inherently compelling pressures" that exist during "*the process of* in-custody interrogation," and the Court stated that one of the chief sources of that pressure was "an interrogator's imprecations, whether implied or expressly stated, that the interrogation *will continue* until a confession is obtained."

384 U.S. 467-468 (emphases added). *Edwards,* in turn, concluded that it was "inconsistent with *Miranda* and its progeny for the authorities, at their instance, to *reinterrogate* an accused *in custody* if he has clearly asserted his right to counsel." *Edwards*, 451 U.S. at 485 (emphases added).

The Court's post-*Edwards* decisions also contemplate a suspect who remains in continuous *Miranda* custody. In *Roberson*, the Court held that *Edwards* applies "[w]hether a contemplated reinterrogation concerns the same or a different offense, or whether the same or different law enforcement authorities are involved in the second investigation." 486 U.S. at 687. *Roberson* expressly relied on "the presumption of coercion that is created by *prolonged police custody*," which it concluded "does not disappear simply because the police have approached the suspect, *still in custody,* still without counsel, about a separate investigation." *Id.* at 683, 686 (emphases added).

In *Minnick*, the Court held that "when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney." 498 U.S. at 153. The Court explained that "[a] single consulation with an attorney does not remove the suspect from persistent attempts by officials to persuade him to waive his rights, or from the coercive pressures that *accompany custody* and that may increase *as custody is prolonged*." *Ibid.* (emphases added).

To be sure, *Edwards*, *Roberson*, and *Minnick* also contain language that could be read to suggest that the *Edwards* presumption, once triggered, lasts forever. See, *e.g.*, *Minnick*, 498 U.S. at 153; *Roberson*, 486 U.S. at 680-682; *Edwards*, 451 U.S. at 484-485. But "words

of * * * opinions are to be read in the light of the facts of the case." *Armour & Co.* v. *Wantock*, 323 U.S. 126, 133 (1944); see *Mosley*, 423 U.S. at 101 (acknowledging that a passage in *Miranda* "could be literally read to mean that a person who has invoked his 'right to silence' can never again be subjected to custodial interrogation by any police officer at any time or place on any subject," but rejecting that interpretation because it "would lead to absurd and unintended results"). And in each of those cases, the suspect was a pretrial arrestee who had remained in continuous custody from the time he invoked his Fifth Amendment right to counsel until the police reapproached him. See *Minnick*, 498 U.S. at 148-149; *Roberson*, 486 U.S. at 678-679; *Edwards*, 451 U.S. at 478-479.

4. A break in custody does not, of course, establish that a suspect now wishes to speak with the police or that any waiver of his right to have counsel present during a subsequent custodial interrogation is voluntary. Rather, a break in custody matters because it constitutes a sufficiently significant change in circumstances as to make inappropriate an irrebuttable presumption to the contrary.

Even following a break in custody, a suspect who is to be interrogated anew still enjoys "the primary protection afforded suspects subject to custodial interrogation"—"the *Miranda* warnings themselves." *Davis*, 512 U.S. at 460.[2] If the suspect continues to view himself as

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[2] Under current law, once formal charges are initiated, the Sixth Amendment independently bars the police from approaching the defendant about the charged offense if he has requested counsel at an arraignment or similar proceeding. See *Michigan* v. *Jackson*, 475 U.S. 625 (1986). On March 30, 2009, this Court entered an order in *Montejo* v. *Louisiana*, No. 07-1529 (argued Jan. 13, 2009), directing the parties

unable "to cope with the pressures of custodial interrogation" without legal assistance, *Roberson*, 486 U.S. at 686, he need only do something he already has done and invoke his Fifth Amendment right to counsel, which would reactivate the *Edwards* presumption.[3]

C. Respondent Experienced A Break In Custody In This Case

The court of appeals determined that it need not decide whether the *Edwards* presumption terminates upon a break in custody. Instead, it held that respondent "was held in continuous custody" for purposes of the *Edwards* rule during the more than two-and-a-half years that separated the August 7, 2003 and March 2, 2006 interviews. Pet. App. 31a. That is incorrect.

As the majority of lower courts that have considered the question have held,[4] the mere fact of incarceration

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to address the following question: "Should Michigan v. Jackson, 475 U.S. 625 (1986), be overruled?" The government has submitted an amicus brief in *Montejo* supporting the overruling of *Jackson*.

[3] In *Minnick*, the Court declined to hold that the *Edwards* presumption terminates whenever a suspect who has remained in continuous custody has consulted with an attorney. Among other reasons, the Court stated that such a rule "would undermine the advantages flowing from *Edwards*' 'clear and unequivocal' character" and create "a regime in which *Edwards*' protection could pass in and out of existence multiple times prior to arraignment." *Minnick*, 498 U.S. at 154-155. Adopting a break-in-custody rule would not undermine the advantages of treating *Edwards* as a clear rule because the question whether a suspect is in *Miranda* custody arises in every *Edwards* case, and the inquiry is no more difficult as to periods before the most recent interrogation than as to the time of the interrogation itself. And determining whether *Edwards*' protection revived would simply require determining whether the suspect unequivocally invoked the right to counsel under *Davis*.

[4] See *Tawfeq Saleh* v. *Fleming*, 512 F.3d 548, 551 (9th Cir. 2008); *United States* v. *Newton*, 369 F.3d 659, 670 (2d Cir.), cert. denied, 543

does not establish protracted and continuous "custody" for purposes of *Miranda* or *Edwards*. Rather, a person serving a prison sentence is not "in custody" for purposes of those decisions unless he is subject to some additional restraint beyond that inherent to incarceration. The court of appeals did not find that respondent was subject to any such additional restraints following the August 7, 2003 interview. And here, the conclusion that a break in custody occurred is further confirmed by the passing of more than two-and-a-half years before respondent was again subjected to custodial interrogation.

1. a. This Court has stated that determining whether a person is in custody for purposes of *Miranda* requires an examination of "all of the circumstances surrounding the interrogation." *Stansbury* v. *California*, 511 U.S. 318, 322 (1994). The Court has described the general inquiry as "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) (per curiam) (internal quotation marks and citation omitted). In making that assessment, however, it is necessary "to separate the restrictions on [a suspect's] freedom arising from police interrogation and those incident to his background circumstances." *United States* v. *Jamison*, 509 F.3d 623, 629

U.S. 947 (2004); *United States* v. *Arrington*, 215 F.3d 855, 856-857 (8th Cir. 2000); *United States* v. *Menzer*, 29 F.3d 1223, 1230-1233 (7th Cir.), cert. denied, 513 U.S. 1002 (1994); *Garcia* v. *Singletary*, 13 F.3d 1487, 1490-1491 (11th Cir.), cert. denied, 513 U.S. 908 (1994); *United States* v. *Hall*, 905 F.2d 959, 962 (6th Cir. 1990); *United States* v. *Cooper*, 800 F.2d 412, 414-415 (4th Cir. 1986); see also Laurie Magid, *Questioning the Question-Proof Inmate: Defining* Miranda *Custody for Incarcerated Suspects*, 58 Ohio St. L.J. 883, 936-939 & n.183 (1997) (citing additional cases).

(4th Cir. 2007). Cf. *Florida* v. *Bostick*, 501 U.S. 429, 435-436 (1991) (whether a bus passenger is "seiz[ed]" for Fourth Amendment purposes does not depend on whether the passenger is "free to leave" in a general sense but on the "principle that those words were intended to capture"; that the passenger independently wishes to remain on the bus does not signify police coercion).

In *Berkemer* v. *McCarty*, 468 U.S. 420 (1984), the Court held that roadside questioning during a traffic stop does not constitute "custodial interrogation" that triggers an officer's obligation to give the *Miranda* warnings. *Id.* at 435-442. The Court did not deny "that a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers," *id.* at 436, but it determined that "[f]idelity to the doctrine announced in *Miranda*" required its application only in "situations in which the concerns that powered the decision are implicated," *id.* at 437.

In *Minnesota* v. *Murphy*, 465 U.S. 420 (1984), the Court held that *Miranda* warnings are unnecessary before "a statement made by a probationer to his probation officer * * * is admissible in a subsequent criminal proceeding." *Id.* at 425. The Court recognized that the probation officer had the power to "compel Murphy's attendance and truthful answers" and had "consciously sought incriminating evidence." *Id.* at 431. The Court also noted that Murphy "would be regarded as 'in custody' for purposes of federal habeas corpus." *Id.* at 430. But the Court stated that "custody for *Miranda* purposes has been more narrowly circumscribed," *ibid.*, and it determined that "[e]ven a cursory comparison of custodial interrogation and probation interviews reveal[ed]

the inaptness of the Minnesota Supreme Court's analogy to *Miranda*," *id.* at 433.

b. Respondent ceased to be "in custody" for purposes of either *Miranda* or *Edwards* when Detective Blankenship terminated the August 7, 2003 interview and respondent was returned to the general prison population to continue serving his sentence on the unrelated charge. Respondent of course continued to experience severe restraints on his liberty at that point. But those restraints were not the product of any "process of incustody interrogation." *Miranda*, 384 U.S. at 467. Rather, they were "incident to [respondent's] background circumstances." *Jamison*, 509 F.3d at 629.

The situation of a person who is serving a sentence of incarceration differs significantly from that of a person who is detained pending an investigation. The prisoner has not been "swept from familiar surroundings" and "thrust into an unfamiliar atmosphere" that was "created for no purpose other than to subject the individual to the will of his examiner." *Miranda*, 384 U.S. at 457, 461. To the contrary, for someone who is already serving a prison sentence, "incarceration * * * is an accustomed milieu." *Isaacs* v. *Head*, 300 F.3d 1232, 1266 (11th Cir. 2002), cert. denied, 538 U.S. 988 (2003). A prisoner also understands that his incarceration will continue whether or not he submits to interrogation about another crime. In that respect, too, he is far different from a person who has been detained for investigatory purposes, who may be vulnerable to the suggestion that his detention and accompanying interrogation will continue unless and until he confesses. See *Minnick*, 498 U.S. at 153; *Miranda*, 384 U.S. at 468; see also *Roberson*, 486 U.S. at 686 (referring to "the presumption

of coercion that is created by prolonged *police* custody") (emphasis added).

c. The court of appeals erred in concluding that "[a]ny 'break in custody' exception to *Edwards* * * * must mean something different than the test for determining custody for purposes of *Miranda* warnings." Pet. App. 38a. *Edwards* is a "corollary to *Miranda*[,]" which "implement[s]" *Miranda*'s protections against "the 'inherently compelling pressures' *of custodial interrogation*." *Roberson*, 486 U.S. at 680-681 (emphasis added) (quoting *Miranda*, 384 U.S. 467). It is logical to use the same definition of "custody" for purposes of both the rule and its corollary, and a break-in-custody limitation on *Edwards* would make little sense if it were untethered from its *Miranda* moorings. In both *Minnick* and *Roberson*, moreover, the Court used the term "custody" to describe not only the process of interrogation itself but also periods of detention that are related to and accompany that questioning. See p. 13, *supra*.

d. The approach adopted by the court of appeals would also create significant barriers to effective law enforcement. People who are already incarcerated for one crime frequently become suspects in another. Under this Court's holding in *Roberson*, however, "[t]he *Edwards* rule * * * is *not* offense specific," meaning that "[o]nce a suspect invokes the *Miranda* right to counsel for interrogation regarding one offense, he may not be reapproached regarding *any* offense unless counsel is present." *McNeil*, 501 U.S. at 177. In addition, prisons are even less likely than police stations to "have a '[prison] lawyer' present at all times to advise prisoners." *Miranda*, 384 U.S. at 474. A holding that all prison inmates are in continuous custody for *Edwards* pur-

poses would risk making an entire category of inmates—*i.e.*, those who asserted the right to counsel during interrogation while serving their sentences—unapproachable for the duration of their often lengthy incarceration. Like *Miranda* itself, *Edwards* cannot "sensibly be read to create a *per se* proscription of indefinite duration." *Mosley*, 423 U.S. at 102.

The court of appeals' holding would also create significant administrative problems. Prisoners are often transferred from one jail or prison to another, and agents of various local, state, or federal law enforcement agencies may wish to speak with them at different points during their incarceration. It is one thing to require police officers to find out whether a suspect has invoked his Fifth Amendment right to counsel at some point in the relatively recent past while being held as a prearraignment detainee. See *Roberson*, 486 U.S. at 687-688. It is quite another thing to require police to determine whether someone who is serving a long prison sentence has ever validly invoked his Fifth Amendment right to counsel at any time, in any place, and to any law enforcement official during a period of continuous incarceration.[5]

e. A person who is serving a prison sentence can, of course, be placed "in custody" for purposes of *Miranda* and *Edwards* when he is subject to custodial interrogation. See *Mathis* v. *United States*, 391 U.S. 1 (1968); see also, *e.g.*, *United States* v. *Chamberlain*, 163 F.3d 499, 503-504 (8th Cir. 1999) (holding that *Miranda* warnings

[5] In this case, Detectives Blankenship and Hoover worked for the same police department and respondent's invocation of his Fifth Amendment right to counsel was noted in Detective Blankenship's report of the August 7, 2003 interview. Pet. App. 2a-3a. Neither of those features, however, will invariably, or even typically, be present.

were required where a prisoner was escorted to a "secure area" for questioning in a "police dominated" atmosphere). The State has not denied that respondent was "in custody" for purposes of both *Miranda* and *Edwards* during the August 7, 2003 and March 2006 interviews and that he was subject to "interrogation" during those times. Following the August 7, 2003 interview, however, respondent was returned to the general prison population, and nothing in the record suggests that he was subjected to any restrictions beyond those that generally accompany incarceration. As a result, respondent ceased to be "in custody" for purposes of *Miranda* and *Edwards* at that point, and the *Edwards* presumption terminated.[6]

2. If there were any doubt that respondent experienced a break in custody in this case, the two-and-a-half years that elapsed between the August 7, 2003 interview and any further interrogation would eliminate it. In *Edwards*, officers reinitiated interrogation the day after

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[6] In *United States* v. *Green*, 592 A.2d 985 (D.C. App. 1991), cert. granted, 504 U.S. 908 (1992), cert. dismissed, 507 U.S. 545 (1993), the United States conceded before the District of Columbia Court of Appeals "that defendant * * * was in continuous custody for purposes of the *Edwards* prophylactic rule" during a five-month period between his initial invocation of his Fifth Amendment right to counsel and his subsequent confession. *Id.* at 988 (quoting government's brief); accord 11/30/92 Tr. of Oral Arg. at 7, *United States* v. *Green*, *supra* (No. 91-1521) (counsel for the government agreeing that the defendant "had been in custody" during the relevant period). The defendant in *Green*, however, was not serving a sentence of incarceration during that period; rather, he was being held in connection with various *pending* charges. See 592 A.2d at 985-986; see also *id.* at 990 n.8 (declining to decide "whether different considerations would [have] come into play if the defendant" had been "transferred to the general prison population following imposition of sentence").

the suspect invoked his right to counsel, see 451 U.S. at 479; in *Roberson* and *Minnick*, the gap was three days, see *Minnick*, 498 U.S. at 148-149; *Roberson*, 486 U.S. at 678. See also *Solem*, 465 U.S. at 641-642 (assuming that police officers violated *Edwards* when they twice reinitiated custodial interrogation within one day after the suspect invoked his right to counsel). Although the Court of Appeals of Maryland acknowledged that "[m]any courts have used the length between interrogations as one relevant factor in considering whether a break in custody exists," Pet. App. 26a n.10, the court erred in declining to assign any weight to that factor in reaching its decision, see *id.* at 41a.

As already explained, a person can be "in custody" for purposes of both *Miranda* and *Edwards* even though he is not being subjected to interrogation at that particular moment. See p. 19, *supra*. But because it is the combination of interrogation *and* custody that creates the pressures that *Miranda* is designed to counteract, the absence of any anticipated or near-term prospect of questioning is highly relevant in assessing whether a genuine break in custody exists.

This Court's concern in both *Miranda* and *Edwards* "was that the 'interrogation environment' created by the interplay of interrogation and custody would 'subjugate the individual to the will of his examiner' and thereby undermine the privilege against compulsory self-incrimination." *Rhode Island* v. *Innis*, 446 U.S. 291, 299 (1980) (quoting *Miranda*, 384 U.S. at 457-458). That observation formed the context for this Court's statement in *Roberson* that, "to a suspect who has indicated his inability to cope with the pressures of custodial interrogation by requesting counsel, any further interrogation without counsel having been provided will surely exacer-

bate whatever compulsion to speak the suspect may be feeling." 486 U.S. at 686.

In contrast, when a prisoner knows he will remain incarcerated whether or not he confesses, a prolonged period during which no interrogation occurs will serve to dissipate the kind of coercive pressures on which *Miranda* is premised. That is particularly so where, as here, the previous interrogation ended without any indication that it would be renewed. See Pet. App. 3a-4a (noting that respondent "expressed his surprise at the renewed questioning on the matter involving his son"). A person who has resumed serving a sentence for an unrelated crime, and has not been approached about other allegations of criminal wrongdoing for more than two-and-half years following his invocation of his Fifth Amendment right to counsel will hardly be badgered into waiving that right simply because a different officer tries to initiate a conversation about those allegations after providing a fresh set of *Miranda* warnings. See Pet. App. 64a ("Two interrogations in two years is not 'badgering.'").[7]

[7] This case presents no occasion to consider whether a break in custody that is extremely brief or provided for the express purpose of terminating the *Edwards* presumption would warrant a different approach. Cf. *Missouri* v. *Seibert*, 542 U.S. 600 (2004). In this case, Detective Hoover was unaware that respondent had invoked his Fifth Amendment right to counsel in the meeting with Detective Blankenship. See Pet. App. 2a-3a & n.1, 86a.

CONCLUSION

The judgment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted.

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