Article

The Supposed Strength of Hopelessness: The Supreme Court Further Undermines *Miranda* in *Howes v. Fields*

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Abstract

This Article analyzes *Howes v. Fields*, in which the Supreme Court ruled that imprisonment alone was not enough to constitute *Miranda* custody. *Fields* provided three grounds to distinguish prisoners from mere suspects: (1) inmates serving in prison did not suffer the shock that often accompanied arrest, (2) prisoners were unlikely to be lured into speaking by any longing for a prompt release, and (3) inmates were aware that police probably lacked the authority to shorten their current prison term. This article asserts that these rationales create their own concerns. *Fields*'s consideration of the shock of arrest opened *Miranda* up to subjective inquiries about inmates' emotional states, a subject prohibited as beyond *Miranda*'s objective analysis. By arguing that inmates were stronger for understanding that prompt release was beyond their hopes, *Fields* turned *Miranda* on its head by deeming hopelessness an asset. Finally, focusing on law enforcement's power to shorten the sentence that a prisoner was currently serving blinded the Court to an inmate's broader liberty interests. This article also aims to analyze the potential impact that possible confusion about these issues might have on police and courts.

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I. Introduction

Few would willingly choose to undergo the ordeal of custodial interrogation, a situation so dire that the Court itself has deemed it "destructive of human dignity."[1] Police have designed custodial interrogation to create an atmosphere of police domination where a person, held incommunicado, will be less "keenly aware of his rights."[2] However awful, most would choose this fate over the prospect of serving time behind bars, an environment so hostile that it is fraught with potential violence.[3] The Supreme Court, on the other hand, has decided that prison life is not so bad. It has even determined that release back into the general prison population can offer a "break" from custodial interrogation.[4] Now, in *Howes v. Fields*, the Court has explicitly determined that "imprisonment,

1. Miranda v. Arizona, 384 U.S. 436, 457 (1966). *Miranda* sought to preserve a person's Fifth Amendment rights while he or she was being subjected to custodial interrogation. The Fifth Amendment provides in part: "No person shall . . . be compelled in any criminal case to be a witness against himself . . . ." U.S. CONST. amend. V.

2. *Miranda*, 384 U.S. at 445, 449.

3. Howes v. Fields, 132 S. Ct. 1181, 1191–92 (2012).

4. *See infra* notes 112–19 and accompanying text. In *Maryland v. Shatzer*, the Court opined, "[W]e think lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*." Maryland v. Shatzer, 130 S. Ct. 1213, 1224 (2010). The Court concluded, "The 'inherently compelling pressures' of custodial interrogation ended when [the suspect] returned to his normal life." *Id.* at 1225.

without more, is not enough to constitute *Miranda* custody."[5]

To support this conclusion, *Fields* offered "three strong grounds" which aimed to distinguish prisoners from suspects undergoing custodial interrogation.[6] *Fields* asserted that inmates serving in prison did not suffer the shock that often accompanied arrest, were unlikely to be lured into speaking by a "longing for prompt release," and were aware that the police probably lacked the authority to shorten their current prison term.[7] The Court believed these three grounds explained a prisoner's superior position to that of a mere suspect speaking to police.[8] Yet *Fields*'s rationales create their own concerns. *Fields*'s consideration of the shock of arrest could open *Miranda* up to subjective inquiries about inmates' emotional states, a subject the Court has previously prohibited as beyond *Miranda*'s objective analysis.[9] By urging that inmates were stronger for understanding that prompt release was beyond their hopes,[10] *Fields* turned *Miranda* on its head by deeming hopelessness an asset.[11] Moreover, focusing on law enforcement's power to shorten the sentence a prisoner was currently serving blinkered the Court's view of an inmate's other liberty interests.[12] Finally, in an attempt to counter a contention advanced by the Court of Appeals that questioning prisoners in private might implicate *Miranda*, *Fields* painted a stark picture of the physical dangers involved in prison life.[13] The Court's unflinching assessment of the atmosphere created by those who reside in prison undermined its own conclusions in previous case law.[14]

In Part II, this Article reviews the evolving definition of *Miranda* custody to establish background for further analysis. Part III critically examines *Fields*'s ruling and reasoning, while Part IV considers the implications of this case on *Miranda* doctrine.

5. *Fields*, 132 S. Ct. at 1191.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *See infra* Part IV.B; *see also* Miranda v. Arizona, 384 U.S. 436, 467 (1966) ("[W]ithout proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains 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.").

12. *Fields*, 132 S. Ct. at 1191.

13. *Id.* at 1191–92.

14. *See infra* Part IV.A–B; Maryland v. Shatzer, 130 S. Ct. 1213, 1224 (2010) ("Interrogated suspects who have previously been convicted of crime live in prison. When they are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control they had over their lives prior to the interrogation. Sentenced prisoners, in contrast to the *Miranda* paradigm, are not isolated with their accusers. They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.").

II. Background

A. The Creation and Evolution of a *Miranda* "Custody" Definition

The Court, in *Miranda v. Arizona*, held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."[15] The safeguards the Court mandated were the now well-known *Miranda* warnings,[16] designed to protect against one particular procedure—custodial interrogation, which exacted "a heavy toll on individual liberty" and traded "on the weaknesses of individuals."[17] Indeed, *Miranda* declared that custodial interrogation was "created for no purpose other than to subjugate the individual to the will of his examiner."[18] The *Miranda* Court therefore concluded, "Without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains 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."[19]

At this early stage in *Miranda* litigation, the Court did not confine itself to "custody" settings. *Miranda* defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[20] The *Miranda* Court considered this two-fold—(1) "custody" or (2) "otherwise deprived of . . . freedom of action in any significant way"—standard so important that it specified it three times in its opinion.[21]

In *Orozco v. Texas*,[22] the Court found police questioning of a suspect arrested in his own bedroom to be a "flat violation" of *Miranda*.[23] In *Oregon v. Mathiason*,[24] the Court again adhered to *Miranda*'s language

15. *Miranda*, 384 U.S. at 444.

16. Specifically, the warnings are: "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.*

17. *Id.* at 455.

18. *Id.* at 457. The *Miranda* Court further asserted that custodial interrogation carried a "badge of intimidation." *Id.*

19. *Id.* at 467.

20. *Id.* at 444.

21. *Id.* at 444, 477, 478. In one passage, the Court made no specific mention of "custody" at all, relying solely on a general description of persons "in all settings in which their freedom of action is curtailed in any significant way." *Id.* at 467.

22. 394 U.S. 324 (1969).

23. *Id.* at 326–27.

24. 429 U.S. 492 (1977).

defining custodial interrogation as questioning of a person "taken into custody or otherwise deprived of his freedom of action in any significant way."[25] In *Mathiason*, however, the Court deemphasized *Miranda*'s reference to deprivation of freedom and instead focused its inquiry solely on "custody."[26] This shift was in response to the Oregon Supreme Court's conclusion that police questioned Mathiason in a "coercive environment."[27] *Mathiason* faulted the state court's reasoning because, "Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime."[28] Unwilling to allow such minimal coercion to be determinative,[29] the Court narrowed *Miranda*'s application to "custody" by declaring that "*Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was *that* sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited."[30]

The Court followed this limit on *Miranda*'s application by establishing a definition of "custody" in *California v. Beheler*.[31] Although the Court in *Beheler* initially found it necessary to mention *Miranda*'s complete formulation, concluding that the suspect was "neither taken into custody nor significantly deprived of his freedom of action,"[32] it shifted to *Mathiason*'s truncated version by noting that "[t]he police are required to give *Miranda* warnings only where there has been such a restriction on a person's freedom as to render him in custody."[33] The Court then offered a definition of "custody" for *Miranda* purposes: "[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."[34] In *Beheler*, the Court fashioned its *Miranda* custody definition out of a phrase used in *Mathiason* to counter a lower court's conclusion finding custody.[35] Coming, as it did, from an aside the Court offered to correct another court,

25. *Id.* at 494.

26. *Id.* at 495.

27. *Id.* at 494–95.

28. *Id.* at 495.

29. *Id.* The *Mathiason* Court also refused to find the mere fact that the questioning occurred at the stationhouse or that the person questioned was considered a suspect sufficient to trigger *Miranda* custody. *Id.*

30. *Id.*

31. 463 U.S. 1121 (1983).

32. *Id.* at 1123.

33. *Id.* at 1124 (internal quotation marks omitted).

34. *Id.* at 1125 (quoting *Mathiason*, 429 U.S. at 495). This could be characterized as requiring formal arrest or de facto arrest.

35. *Id.* Specifcally, *Mathiason* had contended: "Such a noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.'" *Mathiason*, 429 U.S. at 495.

Mathiason's "'formal arrest or restraint on freedom of movement'" language constituted dictum.

Nonetheless, by the time it decided *Berkemer v. McCarty*,[36] the Court considered it "settled" law that *Miranda* only applied "as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'"[37] In *Berkemer*, the defendant, McCarty, had contended that a traffic stop amounted to *Miranda* custody because warnings were required whenever a person was in custody "or otherwise deprived of his freedom of action in any significant way."[38] The Court refused to equate a traffic stop with *Miranda* custody, disparaging the defendant's argument as attempting "to accord talismanic power to [a] phrase in the *Miranda* opinion."[39] The Court then lectured, "Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated."[40] Such a dressing down intimated that the defendant had been carried away by a stray phrase mentioned in passing rather than by crucial language delineating the scope of a Constitutional right.

Moreover, the *Berkemer* Court identified "clarity" as one of *Miranda*'s principal advantages, noting that "*Miranda's* holding has the virtue of informing police and prosecutors with specificity as to what they must do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible."[41] The increased guidance outweighed the burdens *Miranda* imposed "on law enforcement agencies and the courts by requiring the suppression of trust-worthy and highly probative evidence."[42] The *Berkemer* Court offered another insight into *Miranda* by explicitly noting the objective nature of its custody inquiry.[43] The Court found it irrelevant that the officer in *Berkemer* had already decided, as soon as he had seen McCarty step out of his car, that he would take McCarty into custody because the officer "never communicated his intention to" the motorist.[44] The officer's "unarticulated plan" had no bearing on custody because "the only relevant inquiry is how a reasonable man in the suspect's position would have understood the situation."[45] A reasonable person, ignorant of the officer's inner thoughts, would not be able to factor them into the

36. 468 U.S. 420 (1984).

37. *Id.* at 440.

38. *Id.* at 435.

39. *Id.* at 437. Specifically, *Berkemer* declared, "However, we decline to accord talismanic power to the phrase in the *Miranda* opinion emphasized by respondent." *Id.*

40. *Id.*

41. *Id.* at 430.

42. *Id.*

43. *Id.* at 442.

44. *Id.*

45. *Id.*

custody question.

A decade later, in *Stansbury v. California*,[46] the Court held onto many of the threads *Berkemer* had woven.[47] *Stansbury* thus continued to fully recite *Miranda*'s language, including the "freedom of action in any significant way" phrase, while also limiting *Miranda*'s scope by using *Beheler*'s gloss requiring formal or de facto arrest.[48] Further, in *Stansbury* the Court continued to emphasize the objective nature of *Miranda*, noting that "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."[49] Indeed, *Stansbury* went further than *Berkemer* by declaring that "[e]ven a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest."[50] However, the Court did offer the caveat that such views would be relevant "if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave."[51] This "freedom to leave" afterthought would itself take on a life of its own in future cases.[52]

In *Thompson v. Keohane*,[53] the Court reiterated *Beheler's* definition of custody, but parsed it into a two-part test.[54] The first question was "what were the circumstances surrounding the interrogation."[55] The Court likened this inquiry to setting the "scene" and reconstructing the "players' lines and actions."[56] The second query asked, "[G]iven those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the

46. 511 U.S. 318 (1994).

47. *Id.* at 323–25.

48. *Id.* at 322. *Stansbury* retained *Miranda's* mandate that a person being questioned after being "taken into custody or otherwise deprived of his freedom of action in any significant way" must receive the warnings, and yet also noted that "the ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." *Id.* at 322.

49. *Id.* at 323. *Stansbury* explained,

> [O]ne cannot expect the person under interrogation to probe the officer's innermost thoughts. Save as they are communicated or otherwise manifested to the person being questioned, an officer's evolving but unarticulated suspicions do not affect the objective circumstances of an interrogation or interview, and thus cannot affect the *Miranda* custody inquiry.

Id. at 324.

50. *Id.* at 325.

51. *Id.*

52. *See infra* notes 58–59, 71, 75, 79–83 and accompanying text.

53. 516 U.S. 99 (1995).

54. *Id.* at 112. In the case, which reached the Court via federal habeas corpus, the Court held that "the issue whether a suspect is 'in custody,' and therefore entitled to *Miranda* warnings, presents a mixed question of law and fact." *Id.* at 102.

55. *Id.* at 112.

56. *Id.*

interrogation and leave."[57] In its next sentence, the Court precisely restated *Beheler*'s definition of custody, declaring that "the court must apply an objective test to resolve 'the ultimate inquiry': '[was] there a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.'"[58] Thus, in the space of two sentences, the *Keohane* Court confusingly instructed those assessing *Miranda* custody to *both* (1) decide whether a reasonable person would feel free to terminate the interrogation and leave, and (2) divine whether a reasonable person would suffer a formal arrest or a restraint on freedom associated with such an arrest. As *Berkemer* explicitly noted, these two questions are not the same.[59]

Miranda's objective nature significantly affected the Court's reasoning in its next custody case, *Yarborough v. Alvarado*,[60] in which police obtained the confession of a seventeen-year-old.[61] The Court had received the matter under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),[62] and therefore considered the narrow question of whether the lower court, in failing to mention the minor's age as part of the custody analysis, "unreasonably applied clearly established law."[63] The Court held that it did not,[64] noting, "[O]ur opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration."[65] Venturing beyond this conclusion, the Court questioned the soundness of ever considering age in the *Miranda* calculus, warning that accounting for a suspect's age might ensnare police in a "subjective test" that would require officers to "anticipat[e] the frailties or idiosyncrasies of every person whom they question."[66] The Court lauded the clarity of *Miranda*'s objective standard and warned against crossing an "indistinct" line into weighing "impermissible subjective experiences."[67] Considering age would let subjectivity creep into *Miranda* because "[i]t is possible to subsume a subjective factor into an objective test by making the latter more specific in its formulation."[68] Justice Breyer, in his dissent, responded to

57. *Id.*

58. *Id.* (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)).

59. *See* Berkemer v. McCarty, 468 U.S.420, 436–40 (1983) (acknowledging that "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers," and that "few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so," but holding that traffic stops do not typically curtail a suspect's freedom of action "to a 'degree associated with formal arrest'" (quoting *Beheler*, 463 U.S. at 1125)).

60. 541 U.S. 652 (2004).

61. *Id.* at 656. Although subsequently declaring that it had not considered a suspect's age in determining custody, *id.* at 666, the Court did trouble to note that the suspect in *Alvarado* was "then five months short of his 18th birthday." *Id.* at 656.

62. *Id.* at 655.

63. *Id*. at 655, 663; J.D.B. v. North Carolina, 131 S. Ct. 2394, 2405 (2011).

64. *Alvarado*, 541 U.S. at 669.

65. *Id.* at 666.

66. *Id.* at 667 (quoting Berkemer v. McCarty, 468 U.S. 420, 442 n.35 (1983)).

67. *Id.*

68. *Id.*

the Court's contention that the law prevented consideration of age by urging, "the 'reasonable person' standard does not require a court to pretend that Alvarado was a 35-year-old with aging parents whose middle-aged children do what their parents ask only out of respect."[69]

The Court cleared up this confusion in *J.D.B. v. North Carolina*, in which police obtained a confession from a thirteen-year-old seventh grade middle school student.[70] The *J.D.B.* Court, "[s]eeing no reason for police officers or courts to blind themselves" to the commonsense reality that "children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave," held that "a child's age properly informs the *Miranda* custody analysis."[71] The Court spent much of its opinion countering the charge that considering age would undermine the objective nature, and hence, the clarity of *Miranda*'s rule.[72] The Court explicitly restated *Miranda*'s objective standard[73] and agreed that objective reasonableness was "'designed to give clear guidance to police.'"[74] In *J.D.B.*, the Court articulated its own practical rationale for *Miranda*'s objective test:

> Police must make in-the-moment judgments as to when to administer *Miranda* warnings. By limiting analysis to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave, the objective test avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind.[75]

The Court believed that age could be factored into *Miranda* "without doing any damage to the objective nature of the custody analysis"[76] because considering age "in no way involves a determination of how youth 'subjectively affect[s] the mindset' of any particular child."[77] In defending age as a factor, the Court further embedded clarity and

69. *Id.* at 673 (Breyer, J., dissenting). Justice Breyer continued, "Nor does it say that a court should pretend that Alvarado was the statistically determined 'average person'—a working, married, 35-year-old white female with a high school degree." *Id.*

70. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2398 (2011).

71. *Id.* at 2398–99.

72. *Id.* at 2402–05, 2407.

73. *Id.* at 2402 ("[W]e have required police officers and courts to 'examine all the circumstances surrounding the interrogation' . . . including any circumstance that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave . . . .'" (quoting Stansbury v. California, 511 U.S. 318, 322, 325 (1994))).

74. *Id.* (quoting *Alvarado*, 541 U.S. at 668).

75. *Id.*

76. *Id.* at 2403.

77. *Id.* at 2405.

objectivity as fundamental values in its *Miranda* analysis.

In contrast to its strict adherence to *Miranda*'s objective standard, the *J.D.B.* Court drifted from the formal/de facto arrest standard articulated from *Beheler* to *Keohane*.[78] At the outset of its opinion, the Court spoke of custody in terms of feeling "bound to submit to police questioning" or feeling "free to leave."[79] The Court so favored this "freedom to leave" formulation of custody that it repeated a version of it four times.[80] The Court crafted this "custody" test by borrowing language *Stansbury* had used in a different context. As previously noted, the *Stansbury* Court had employed the "freedom to leave" language when it was discussing whether an officer's articulated views would affect a reasonable person's assessment of his or her situation.[81] The *Stansbury* Court explicitly stated that *Beheler*'s formal/de facto arrest test was the "ultimate inquiry" for determining *Miranda* custody.[82] Despite this, in all four of its references to *J.D.B.*, the Court tied the novel "freedom to leave" language with the very objective standard it took such care in following.[83] The consequence was that while the Court tightened its allegiance to its objective test, it distanced itself from *Beheler*'s formal arrest or de facto arrest standard.

The Court's analysis of custody has thus taken a rather tortured path since its importance was identified in *Miranda*.[84] *Miranda*'s initial mandate that warnings be given whenever "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way"[85] was diminished to only "where there has been such a restriction on a person's freedom as to render him 'in custody.'"[86] The Court executed this crucial pivot in *Mathiason*, a per curiam opinion which, as Justice Stevens

78. *See supra* notes 33–37, 48, 54, 58 and accompanying text.

79. *J.D.B.*, 131 S. Ct. at 2398–99.

80. Specifically, the *J.D.B.* Court noted,

> Rather than demarcate a limited set of relevant circumstances, we have required police officers and courts to "examine all of the circumstances surrounding the interrogation" . . . including any circumstance that "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave" . . . .

Id. at 2402 (quoting Stansbury v. California, 511 U.S. 318, 322, 325 (1994)). Further, *J.D.B.* phrased the question of when to give *Miranda* warnings as "asking how a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave." *Id.* The Court also noted, "In some circumstances, a child's age 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'" *Id.* at 2402–03 (quoting *Stansbury*, 511 U.S. at 325). Finally, the Court declared, "the whole point of the custody analysis is to determine whether, given the circumstances, 'a reasonable person [would] have felt he or she was . . . at liberty to terminate the interrogation and leave.'" *Id.* at 2407 (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).

81. *Stansbury*, 511 U.S. at 325.

82. *Id.* at 322. Further, *Keohane*, which the Court decided after *Stansbury*, still employed *Beheler's* test. *Keohane*, 516 U.S. at 112.

83. *J.D.B.*, 131 S. Ct. at 2402, 2403, 2407.

84. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

85. *Id.*

86. Oregon v. Mathiason, 429 U.S. 492, 495 (1977).

protested in his dissent, lacked "the benefit of full argument and plenary consideration."[87] The Court then took a stray phrase from *Mathiason* to form its "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest" test in *Beheler*,[88] another per curiam opinion from which Justice Stevens dissented, noting the lack of "briefs or arguments on the merits."[89]

The "otherwise deprived of his freedom of action in any significant way" language which *Beheler* excised became the subject of judicial derision in *Berkemer*, where the Court equated emphasizing this language to according it talismanic power.[90] Despite *Berkemer's* harsh dismissal, the Court equated custody to a restriction other than arrest in *J.D.B.*, where it repeatedly referred to a reasonable person's feeling of "freedom to leave."[91] *Berkemer's* most lasting legacy was its absolute rejection of the subjective viewpoint in analyzing *Miranda* custody, deeming the "only relevant inquiry" to be the reasonable person test.[92] The Court has subsequently remained faithful to the objective test, and the clarity supposed to go along with it, to such a degree that it flirted with ignoring the age of the suspect in *Alvarado*.[93] Even when the Court chose to include age as a factor in its *Miranda* custody analysis, it viewed the values of objectivity and clarity as ends in themselves.[94]

B. *Miranda* "Custody" Issues in the Prison Setting

When the Court first considered custodial interrogation in the prison context, in *Mathis v. United States*,[95] it adhered to *Miranda's* original "'custody or otherwise deprived of his freedom by the authorities in any significant way'" formulation for *Miranda* application.[96] The facts of *Mathis* were quite similar to those in *Fields*; in both, officials obtained statements while the suspect was in prison serving a sentence for another crime.[97] In *Mathis*, the Court took it for granted that the prisoner was in custody for *Miranda* purposes.[98] Even the government in the case assumed custody generally existed in the prison setting, and attempted to avoid *Miranda*'s mandates by urging that the doctrine did not apply to "a routine tax investigation," or for questioning on an offense other than the one for

87. *Id.* at 500 (Stevens, J., dissenting).
88. California v. Beheler, 463 U.S. 1121, 1125 (1983).
89. *Id.* at 1127 (Stevens, J., dissenting).
90. Berkemer v. McCarty, 468 U.S. 420, 437 (1983).
91. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2402, 2405, 2407 (2011).
92. *Berkemer*, 468 U.S. at 442.
93. Yarborough v. Alvarado, 541 U.S. 652, 666–67 (2004).
94. *J.D.B.*, 131 S. Ct. at 2402.
95. 391 U.S. 1 (1968).
96. *Id.* at 5 (quoting Miranda v. Arizona, 384 U.S. 436, 478 (1966)).
97. *Id.* at 2; *see infra* notes 120–121.
98. *Mathis*, 391 U.S. at 4–5.

which the inmate was currently serving a sentence.[99] The *Mathis* Court rejected such contentions without explicitly reaching the more fundamental question of whether being in prison itself constituted *Miranda* custody.[100] Subsequently, however, the Court relied on *Mathis* for finding "the *Miranda* principle applicable to questioning which takes place in a prison setting during a suspect's term of imprisonment on a separate offense," thus suggesting that prison is the equivalent of custody for *Miranda* purposes.[101]

In *Illinois v. Perkins*,[102] the Court also assumed that prison amounted to *Miranda* custody.[103] In *Perkins*, the Court was presented with the issue of "whether an undercover law enforcement officer must give *Miranda* warnings to an incarcerated suspect before asking him questions that may elicit an incriminating response."[104] The Court, supposing that Perkins was "in custody in a technical sense," criticized the state court for mistakenly assuming "that because the suspect was in custody, no undercover questioning could take place."[105] Although ambiguous,[106] this language seemed to indicate that the Court considered Perkins in custody, especially in light of the fact that the Court noted that the danger *Miranda* protected against was the "interaction of custody and official interrogation."[107] Here, even with the existence of both custody and interrogation, "the agent carries neither badge nor gun and wears not police blue, but the same prison gray as the suspect," and therefore "there is no *interplay* between police interrogation and police custody."[108]

The key fact in *Perkins* was not the lack of custody, but the suspect's ignorance of his conversant's identity as a government official. The "questioning" (interrogation) "by captors" (those imposing custody) "who appear to control the suspect's fate, may create mutually reinforcing pressures" that weaken the suspect's will.[109] Yet, no such pressures exist "where a suspect does not know that he is conversing with a government agent."[110] Thus, the Court in *Perkins* held that "*Miranda* warnings are not required when the suspect is unaware that he is speaking to a law

99. *Id.* at 4.

100. *Id.*

101. Oregon v. Mathiason, 429 U.S. 492, 494 (1977).

102. 496 U.S. 292 (1990).

103. *Id.* at 296–97.

104. *Id.* at 295–96.

105. *Id.* at 297.

106. It is unclear whether the *Perkins* Court labeled as "mistaken" the lower court's belief that Perkins was in custody, or mistakenly ruled that no questioning could ever take place of one who was indeed in custody. *See id.* ("The state court here mistakenly assumed that because the suspect was in custody, no undercover questioning could take place.").

107. *Id.*

108. *Id.* (quoting Yale Kamisar, Brewer v. Williams*,* Massiah*, and* Miranda*: What is "Interrogation"? When Does it Matter?* 67 GEO. L.J. 1, 63, 67 (1978)) (internal quotation marks omitted).

109. *Id.*

110. *Id.*

enforcement officer and gives a voluntary statement."[111] The Court's entire "interplay" discussion was not only premised on the existence of both custody and interrogation, but meant to explain why the lack of connection between them shielded police from any *Miranda* obligations.

When the Court, in *Maryland v. Shatzer*, did directly address the *Miranda* custody issue in prison, it actually considered whether releasing a person back into "the general prison population where he was serving an unrelated sentence" amounted to a "*break* in *Miranda* custody," something never mentioned in *Mathis* or *Perkins*.[112] In *Shatzer*, the Court concluded that "lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*."[113] *Shatzer* reached this result in a curious manner. The Court began by dutifully recalling that, "To determine whether a suspect was in *Miranda* custody we have asked whether 'there is a "formal arrest or restraint on freedom of movement" of the degree associated with formal arrest.'"[114] The Court then readily admitted that "[t]his test, no doubt, is satisfied by all forms of incarceration."[115] Such a result, however, did not bother the Court, for it asserted, "the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody."[116] For support of this proposition, the Court offered *Berkemer*'s determination that a traffic stop, though a detention, did not amount to *Miranda* custody.[117] The problem with such reasoning is that it made the very mistake *Berkemer* warned against—it equated *Beheler*'s formal/de facto arrest test with *any* restraint on "freedom of movement."[118] The result of using *Beheler*'s test

111. *Id.* at 294. *Perkins* further noted, "When a suspect considers himself in the company of cellmates and not officers, the coercive atmosphere is lacking." *Id.* at 296.

112. Maryland v. Shatzer, 130 S. Ct. 1213, 1224 (2010) (emphasis added).

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* The *Shatzer* Court offered no citation in support of this contention. *Id.*

117. *Id.*

118. *See* Berkemer v. McCarty, 468 U.S. 420, 439–41 (1983) (holding that a person detained in a traffic stop is not automatically in custody, but if the person "thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*," and declining to adopt a bright-line rule either "that *Miranda* applies to all traffic stops or a rule that a suspect need not be advised of his rights until he is formally placed under arrest"). Under the reasoning of *Berkemer*, "the safeguards prescribed by Miranda become applicable as soon as a suspect's freedom of action is curtailed to a "'degree associated with formal arrest.'" *Id.* (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)); *see also supra* notes 31–40 and accompanying text. By first admitting that "all forms of incarceration" satisfy *Beheler*'s formal/de facto arrest test—incarceration is a curtailment of a suspect's freedom of action to a degree associated with formal arrest—and then asserting that such a restriction on the suspect's freedom of movement may not automatically trigger *Miranda* protections, the Court undermined the holding in *Berkemer* that "the safeguards prescribed by Miranda become applicable as soon as a suspect's freedom of action is curtailed to a "'degree associated with formal arrest.'" *Shatzer*, 130 S. Ct. at 1224; *Berkemer*, 468 U.S. at 439–41 (quoting *Beheler*, 463 U.S. at 1125). The Court skirted the issue by characterizing *Berkemer*'s holding as an assertion that the "temporary and relatively nonthreatening detention involved in a traffic stop or Terry stop does not constitute *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224 (internal

interchangeably with a "freedom of movement" test was that it equated two mutually exclusive standards, thus undermining the clarity the Court had so diligently attempted to preserve.[119] Such was the state of the case law when the Court agreed to consider *Fields*.

III. *Howes v. Fields*

A. Facts

In December 2001, Randall Fields was serving a forty-five-day sentence[120] in Lenawee County Jail in Michigan after pleading guilty to "disorderly conduct arising from a domestic-abuse charge."[121] Sometime between 7:00 and 9:00 p.m.,[122] jailers[123] escorted Fields from his cell, guided him through "J door," which connected the jail to the Sheriff's Department, and delivered him to a conference room.[124] Armed Deputies David Batterson and Dale Sharp[125] were in the conference room for the five-to-seven hour interview.[126] Fields, dressed in his orange jumpsuit, was "free of handcuffs and other restraints," while he sat in a conference room with a door that was "sometimes open and sometimes shut."[127] Upon his

citations omitted). In fact, however, *Berkemer*'s holding was an assertion that such stops do not automatically constitute Miranda custody unless the suspect's freedom of movement is restricted to a degree associated with formal arrest. *Berkemer*, 468 U.S. at 440–41.

119. *See supra* notes 31–35, 90 and accompanying text (explaining the *Beheler* definition of custody as "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest"); *supra* note 118 (criticizing the Court's characterization of its holding in *Berkemer*, and explaining that, under *Berkemer*, formal or de facto arrest constitutes *Miranda* custody regardless of any assessment of the suspect's "freedom of movement" once formal or de facto arrest has been established); *see also* J.D.B. v. North Carolina, 131 S. Ct. 2394, 2402 (2011) ("The benefit of the custody analysis is that it is 'designed to give clear guidance to the police.'" (quoting Yarborough v. Alvarado, 541 U.S. 652, 668 (2004))).

120. Brief for the United States of America as Amicus Curiae Supporting Petitioner at 2, Howes v. Fields, 132 S. Ct. 1181 (2012) (No. 10-680), 2011 WL 2132710, at *2 [hereinafter Amicus Brief].

121. Brief for the Petitioner at 6, Howes v. Fields, 132 S. Ct. 1181 (2012) (No. 10-680), 2011 WL 2689001, at *6 [hereinafter Petitioner's Brief]; *Fields*, 132 S. Ct. at 1185.

122. The *Fields* Court noted that although "Fields testified that he left his cell around 8 p.m.," the lower courts concluded "that the interview began between 7 p.m. and 9 p.m." *Fields*, 132 S. Ct. at 1186 n.1.

123. There was a discrepancy as to how many officials accompanied Fields to the conference room. The Court and amicus counted one officer, Amicus Brief, *supra* note 120, at 1; *Fields*, 132 S. Ct. at 1185, while petitioner stated two jailers in his brief, Petitioner's Brief, *supra* note 121, at 6, and also testified that he was escorted by three officials, Brief for the Respondent at 1, Howes v. Fields, 132 S. Ct. 1181 (2012) (No. 10-680), 2011 WL 2688997, at *1 [hereinafter Respondent's Brief].

124. Petitioner's Brief at 6.

125. Respondent's Brief, *supra* note 113, at 37; *see also id.* at 4 ("Deputy Dale Sharp testified that he was a field training officer and his job was to observe Deputy Batterson's behavior and make sure it was appropriate.").

126. The *Fields* Court noted that the times given for the interview varied from three to seven hours. *Fields*, 132 S. Ct. at 1186 n.2.

127. *Id.* at 1186. Fields himself was "unsure if he had handcuffs and ankle cuffs on."

arrival in the room, a deputy told him that he "could get up and leave whenever [he] wanted to."[128]

The two deputies questioned Fields about "allegations that, before he came to prison, he had engaged in sexual conduct with a 12-year-old boy."[129] When confronted with the accusation about halfway through the interview, Fields became agitated, getting out of his chair and yelling.[130] Deputy Batterson told Fields "he could return to his cell, because Batterson was not going to tolerate being talked to that way."[131] Fields later testified that Deputy Batterson told him to "sit my f---ing ass down" and that "if I didn't want to cooperate, I could leave."[132] Fields remained in the conference room and ultimately confessed to engaging in sexual acts with the victim.[133] Deputies did not provide Fields with *Miranda* warnings or tell him "that he did not have to talk to the deputies."[134] When Fields did request to leave, he had to wait an additional twenty minutes for a corrections officer to be summoned to escort him back to his cell.[135] By the time Fields returned to jail, it was "well after the hour when he generally retired."[136] Although deputies offered Fields food and provided him water,[137] officials failed to provide him his Paxil medication for depression or his anti-rejection medicine for his transplanted kidney.[138]

A jury convicted Fields of "two counts of third-degree criminal sexual conduct," and the judge sentenced him to ten to fifteen years in prison.[139] The Michigan Court of Appeals affirmed and the Michigan Supreme Court denied discretionary review.[140] The U.S. District Court for the Eastern District of Michigan granted relief on a petition for habeas corpus.[141] The Court of Appeals for the Sixth Circuit affirmed, holding that *Miranda* applied because "isolation from the general prison population, combined with questioning about conduct occurring outside the prison,

Respondent's Brief, *supra* note 123, at 2. The conference room "was a well-lit and sizable space with a desk, white board, and chairs." Petitioner's Brief, *supra* note 121, at 3.

128. Petitioner's Brief, *supra* note 121, at 6 (internal quotation marks omitted).

129. *Fields*, 132 S. Ct. at 1185.

130. *Id.* at 1186; Petitioner's Brief, *supra* note 121, at 6.

131. Petitioner's Brief, *supra* note 121, at 7.

132. *Id.*

133. *Fields*, 132 S. Ct. at 1186. Fields admitted that "he had oral sex with and also masturbated the victim." Petitioner's Brief, *supra* note 121, at 8.

134. Respondent's Brief, *supra* note 123, at 4.

135. *Id.* at 3.

136. *Fields*, 132 S. Ct. at 1186. While Fields's normal bedtime was "10:30 p.m. or 11 p.m.," *id.* at 1186, n.3, he was returned to his cell perhaps as late as "1 or 2 a.m.," Amicus Brief, *supra* note 120, at 2.

137. Petitioner's Brief, *supra* note 121, at 7.

138. Respondent's Brief, *supra* note 123, at 3.

139. *Fields*, 132 S. Ct. at 1186.

140. *Id.*

141. *Id.*

makes any such interrogation custodial *per se*."[142] The court of appeals therefore concluded that the state court's decision was "contrary to clearly established federal law" as determined by the Supreme Court.[143] The case's procedural history thus presented the Court with a narrow issue of whether a state prisoner's confinement arose from "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."[144] The Court held that the state courts made no such clear blunder because its precedent contained no such categorical rule.[145]

B. The Court's Opinion

The Court, in an opinion written by Justice Alito, flatly rejected the court of appeals' conclusion that "our precedents clearly establish that a prisoner is in custody within the meaning of *Miranda v. Arizona* if the prisoner is taken aside and questioned about events that occurred outside the prison walls."[146] The *Fields* Court declared that, not only was it "abundantly clear that our precedents do not clearly establish" the court of appeals' "categorical rule," but that the Court had "repeatedly declined to adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial."[147] In reviewing its precedent where inmates were questioned, the Court noted that in *Perkins* it had explicitly refused to explore the issue, while in *Shatzer* it "expressly declined to adopt a bright-line rule for determining the applicability of *Miranda* in prisons."[148] As for *Mathis*, the Court stated that the court of appeals had "misread the holding in that case," which "did not hold that imprisonment, in and of itself, is enough to constitute *Miranda* custody."[149] The Court concluded, "In sum, our decisions do not clearly establish that a prisoner is always in custody for purposes of *Miranda* whenever a prisoner is isolated from the general prison population and questioned about conduct outside the prison."[150] When directly addressing the issue presented, the Court stated what its precedent did *not* establish, thus creating little new law.

142. *Id.* at 1187.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* at 1185 (internal citation omitted). The framing of the issue as whether the Court's decisions "clearly establish such a rule," was based on the fact that the case reached the Court under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Id.* The AEDPA provides that a federal court "may grant a state prisoner's application for a writ of habeas corpus if the state-court adjudication pursuant to which the prisoner is held '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.'" *Id.* at 1187 (quoting 28 U.S.C. § 2254(d)(1)).

147. *Id.* at 1187.

148. *Id.*

149. *Id.* at 1188.

150. *Id.* at 1188–89.

The Court then ventured into the merits of the court of appeals' proposed categorical rule, concluding that it was "simply wrong."[151] The three "elements" of the court of appeals' flawed rule, "(1) imprisonment, (2) questioning in private, and (3) questioning about events in the outside world," were "not necessarily enough to create a custodial situation for *Miranda* purposes."[152] Instead, *Miranda* considered "all of the circumstances surrounding interrogation" to determine whether a reasonable person would have felt "at liberty to terminate the interrogation and leave."[153] The Court specifically listed a series of factors relevant to the inquiry: (1) "the location of questioning;" (2) "its duration;" (3) "statements made during the interview;" (4) "the presence or absence of physical restraints during the questioning;" and (5) "the release of the interviewee at the end of the questioning."[154] In addition, the Court cautioned that determining the limit on "freedom of movement" was "simply the first step in the analysis, not the last," for some restraints, such as *Berkemer*'s traffic stop, did not amount to custody.[155]

At this juncture, the Court did not apply the formal/de facto arrest test it had consistently employed from *Beheler* through *Keohane*. Instead, the Court segued to *Shatzer* by noting that a traffic stop was "worlds away" from questioning in prison.[156] The Court reasoned that *Shatzer*'s holding that "a break in custody may occur while a suspect is serving a term in prison" would suggest that incarceration lacked the coercive pressures *Miranda* had feared.[157] The Court noted, "If a break in custody can occur while a prisoner is serving an uninterrupted term of imprisonment, it must follow that imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*."[158] The Court offered "three strong grounds for this conclusion"[159]: (1) "questioning a person who is already serving a prison term does not generally involve the shock that very often accompanies arrest";[160] (2) "a prisoner, unlike a person who has not been sentenced to a term of incarceration, is unlikely to be lured into speaking by a longing for prompt release";[161] and (3) "a prisoner, unlike a person who has not been convicted and sentenced, knows that the law enforcement officers who question him probably lack the authority to affect the duration

151. *Id.* at 1189.

152. *Id.*

153. *Id.* (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995); Stansbury v. California, 511 U.S. 318, 322–23, 325 (1994)) (internal quotation marks omitted).

154. *Id.*

155. *Id.* at 1189–90.

156. *Id.* at 1190.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 1191.

of his sentence."[162] The Court therefore concluded that since the "standard conditions of confinement" will not necessarily implicate the interests *Miranda* sought to protect, "service of a term of imprisonment, without more, is not enough to constitute *Miranda* custody."[163]

The *Fields* Court was not quite finished, for it deemed "[t]he two other elements included in the court of appeals' rule" to be "insufficient": (1) "questioning in private" and (2) "questioning about events that took place outside the prison."[164] The Court countered the first element by noting that the simple act of "[t]aking a prisoner aside for questioning" did not somehow convert non-custody into custody, for inmates were not in a "supportive atmosphere" in the first place.[165] As to the court of appeals' second element, the Court noted that any coercion would be "neither mitigated nor magnified by the location of the conduct about which questions are asked."[166] The Supreme Court thus concluded that the court of appeals' categorical rule was "unsound."[167]

The Court, following its traditional approach of considering "all the features of the interrogation," found that Fields was "not taken into custody for purposes of *Miranda*."[168] The Court acknowledged that the following circumstances pointed toward custody: the inmate "did not invite the interview or give consent to it in advance,"[169] "he was not advised that he was free to decline to speak with the deputies,"[170] the interview lasted the long duration of five to seven hours—"well past the hour that [Fields] generally went to bed",[171] and the deputies were armed, spoke harshly, and used profanity.[172] Such circumstances, however, were "offset" by mitigating factors.[173] The Court found "most important" the fact that deputies told Fields at the outset of questioning, and reminded him during the interview, that he could return to his cell whenever he wished.[174] Further, Fields was not physically restrained as he sat in a "not uncomfortable" conference room that sometimes had an open door.[175]

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 1192.

167. *Id.*

168. *Id.*.

169. *Id.* at 1192–93.

170. *Id.* at 1193. This fact would fall within the "statements made during the interview" factor of the *Fields* custody analysis. *Id.* at 1189.

171. *Id.* at 1193. This fact would come under *Fields*'s "duration" of questioning factor. *Id.* at 1189.

172. *Id.* at 1193. The harsh words and profanity would fall within *Fields*'s "statements during the interview" factor. *Id.* at 1189.

173. *Id.* at 1193.

174. *Id.* This falls within *Fields*'s "statements made during the interview" factor. *Id.* at 1189.

175. *Id.* at 1193. These circumstances are within *Fields*'s "physical restraints during the questioning" factor. *Id.* at 1189.

Deputies did not threaten Fields and even offered him food and water.[176] Thus, "all of the circumstances of the questioning" led the Court to hold that Fields "was not in custody within the meaning of *Miranda*."[177] The Court therefore reversed the judgment of the Court of Appeals.[178]

IV. Implications of *Fields*'s Reasoning

A. *Fields*'s First Ground Supporting Its Conclusion that Imprisonment Alone is Not Enough to Create *Miranda* Custody Improperly Emphasized the Shock Accompanying Arrest, Potentially Creating the Very Subjectivity *Miranda* Prohibits

In *Fields*, the Supreme Court concluded that imprisonment, by itself, did not amount to *Miranda* custody partly because "questioning a person who is already serving a prison term does not generally involve the shock that very often accompanies arrest."[179] Here, the Court employed emotionally evocative language to describe what it called the "paradigmatic *Miranda* situation," where a person was arrested and "whisked to a police station for questioning."[180] The Court envisioned a "sharp and ominous change" to a person who was "abruptly transported from the street" to a "police-dominated atmosphere" which was "cut off" from "normal life."[181] The Court worried about "shock" triggering coercive pressures due to a suspect being "yanked from familiar surroundings in the outside world."[182]

The use of such terms is not unprecedented; *Miranda* itself spoke of a defendant being "thrust"[183] or "swept" into unfamiliar surroundings.[184] Yet, the Court's emphasis on such emotion, and its contrast with the less jarring experience of prisoners who, "already serving a term of imprisonment," usually suffer "no such change," potentially set up two new factors for analysis of custody: (1) the degree of fall a person suffers from his or her original position to police questioning, and (2) the speed of the transition.[185] The degree of fall could complicate the custody inquiry by creating a need to assess the original location, position, or status of the arrestee. Those confronted by police while attending a party, being pampered on vacation, or being lauded at an awards banquet, would suffer a

176. *Id.* at 1193. Such facts fall within *Fields*'s "statements made during the interview" factor. *Id.* at 1189.

177. *Id.* at 1194.

178. *Id.*

179. *Id.* at 1190.

180. *Id.*

181. *Id.*

182. *Id.* at 1190–91.

183. Miranda v. Arizona, 384 U.S. 436, 457 (1966).

184. *Id.* at 461.

185. *Fields*, 132 S. Ct. at 1193.

more abrupt and precipitous transition than a person waiting in line at the Department of Motor Vehicles, a student stuck in a boring lecture, or a factory worker tied to the assembly line.[186] Thus, those fortunate enough to have the most freedom and status in society might have the strongest *Miranda* claim, due to the dramatic and abrupt fall from their "familiar surroundings."[187]

The second factor suggested by a person being "whisked" or "yanked" by a "sharp change" would be the speed of transition from living a normal life to being subject to police questioning.[188] Persons who, for whatever reason, have had prior contact with the law, might have their *Miranda* rights eroded by entering a prolonged process of increasing contact with police. Each individual might start at birth with the same amount of distance from police questioning. Those who are stopped by police or repeatedly questioned potentially suffer a resulting diminution of *Miranda* rights with each contact because they have entered a chronic phase of interaction with police that undermines any contention of abrupt change caused by custodial interrogation. Individuals residing in high crime neighborhoods might, by force of circumstance, have their *Miranda* rights worn down when police, pursuing investigation of crime, stop to seek information or to dispel suspicion. Furthermore, police themselves would have an incentive to serially contact persons in public, for the very fact of contact, and familiarity with officers, could lessen the speed of transition from freedom to police interrogation.

The Court's new *Fields* factors might place prisoners in an underclass where they have limited *Miranda* rights. Persons in the "outside world" would remain first class citizens of *Miranda*, able to expect warnings with any abrupt change. Prisoners, on the other hand, being vaccinated by prior or current confinement, are relatively immune to the pressures that would impact law-biding citizens. Further, once an

186. Such analysis already plays a part in a Fourth Amendment issue mentioned by the Court in *Berkemer*, the identification of "seizure" of a person. Berkemer v. McCarty, 468 U.S. 420, 439–40 (1984). Seizures of person have been traditionally assessed by whether "a reasonable person would believe that he or she is not 'free to leave.'" Florida v. Bostick, 501 U.S. 429, 435 (1991). The Court in *Bostick*, however, reasoned that a person's voluntary submission to certain restrictions on leaving would make the traditional "freedom to leave" test irrelevant. *Id.* at 436. In *Bostick*, the Court noted that "Bostick's freedom of movement was restricted by a factor independent of police conduct—i.e., by his being a passenger on a bus. Accordingly, the "free to leave" analysis on which Bostick relies is inapplicable." *Id.* The Court thus provided an alternative standard for use in situations where the person approached by officers has already limited his or her own freedom to leave: "[T]he crucial test is whether, 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.'" *Id.* at 437 (quoting Michigan v. Chesternut, 486 U.S. 567, 569 (1988)); *see also* INS v. Delgado, 466 U.S. 210, 218 (1984) (finding that the presence of INS agents at the exits of a factory did not constitute a seizure of the factory because "[t]his conduct should have given [the workers] no reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer").

187. *Fields*, 132 S. Ct. at 1193.

188. *Id.*

individual is serving time, this experience creates an immutable characteristic in the inmate, at least as long as the person is imprisoned. Even after release, the ex-convict will rarely achieve the heights from which a dramatic fall will readily trigger *Miranda* rights.

The most fundamental problem with *Fields*'s new factors is their tendency to inject a subjective component into *Miranda*, a standard the Court has repeatedly maintained to be "an objective test."[189] Such subjective factors could destroy *Miranda*'s clarity.[190] Introduction of subjectivity is deceptively easy to do, for "the line between permissible objective facts and impermissible subjective experiences can be indistinct in some cases."[191] The Court has rejected a "suspect's experience with law enforcement" as a factor for *Miranda*, for it might "require police to 'anticipat[e] the frailties and idiosyncrasies of every person whom they question.'"[192]

Fields drifted into subjectivity when attempting to understand the "normal life" of a prisoner.[193] The Court surmised,

> For a person serving a term of incarceration . . . the ordinary restrictions of prison life, while no doubt unpleasant, are expected and familiar and thus do not involve the same 'inherently compelling pressures' that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station.[194]

Here, the Court was venturing into the inner world of a "person who is already serving a term of imprisonment," and therefore trespassing upon the forbidden subjective territory of prior experience with law enforcement.[195] Indeed, the very distinction between inmates and those in the "outside world" is based on the individual's prior experience with law enforcement. Thus, by the Court's own explicit standards, *Fields*'s first "strong ground" suffers a troubling flaw.

189. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2402 (2011); Yarborough v. Alvarado, 541 U.S. 652, 667 (2004); Stansbury v. California, 511 U.S. 318, 323 (1994).

190. *J.D.B.*, 131 S. Ct. at 2402.

191. *Alvarado*, 541 U.S. at 667. For instance, "It is possible to subsume a subjective factor into an objective test by making the latter more specific in its formulation." *Id.*

192. *Id.* at 666–67 (quoting People v. P., 233 N.E.2d 255, 260 (1967)). Therefore, the Court has refused to consider "the defendant's prior interview with the police" or a "suspect's criminal past and police record" because such facts are irrelevant and unknowable to police. *Id.* at 667.

193. *Fields*, 132 S. Ct. at 1190.

194. *Id.* at 1191 (quoting Maryland v. Shatzer, 130 S. Ct. 1213, 1224 (2010)).

195. *Id.* at 1190.

B. *Fields*'s Second Ground Supporting Its Conclusion that Imprisonment Alone is Not Enough to Create *Miranda* Custody Curiously Viewed Hopelessness as Strength

The *Fields* Court also supported its conclusion that imprisonment was not *Miranda* custody by contending that "a prisoner, unlike a person who has not been sentenced to a term of incarceration, is unlikely to be lured into speaking by a longing for prompt release."[196] In contrast to an inmate, one who is arrested "may be pressured to speak by the hope that, after doing so, he will be allowed to leave and go home."[197] Meanwhile, a prisoner suffers no such illusions, for he knows "he will remain under confinement."[198] However logical, this was a curious argument to be made by a Court that just acknowledged that inmates "'live in prison,'" see it as "expected and familiar," and therefore experience no "'inherently compelling pressures'" akin to custodial interrogation while serving their sentence.[199] In *Shatzer*, the Court made a point of equating prison time to "normal life,"[200] noting that inmates can visit the library, exercise, obtain education and occupational training, receive mail, and have visitors.[201] *Shatzer* relied on such reasoning to hold that a return to prison could constitute a break in *Miranda* custody.[202]

Despite a prison library or exercise yard, few would disagree that incarceration is hardly a normal life, and, as the Court notes in *Fields*, inmates hold out little hope of release from its confines.[203] The Court views this hopelessness as a strength, for the very bleakness of their prospects for freedom equips prisoners with protection from being lured to speak to their own guilt.[204] The very existence of this argument is a demonstration of how far the Court has come from its *Miranda* decision. In *Miranda*, the suspect's sense of hopelessness was not only seen as a disadvantage, but one that police had expertly exploited to obtain confessions.[205] *Miranda* warned against law enforcement's creation of an atmosphere of "the invincibility of the forces of the law,"[206] offering "the subject no prospect of

196. *Id.* at 1191.

197. *Id.*

198. *Id.*

199. *Id.* (quoting *Shatzer*, 130 S. Ct. at 1219, 1224).

200. *Shatzer*, 130 S. Ct. at 1221, 1225.

201. *Id.* at 1225

202. *Id.* at 1225, 1227.

203. *Fields*, 132 S. Ct. at 1191.

204. *Id.*

205. Miranda v. Arizona, 384 U.S. 436, 449–50 (1966) (quoting an officers' manual to illustrate the psychological consequences of removing an individual from familiar surroundings and giving the officer complete control of the interrogation, creating an "'atmosphere [that] suggests the invincibility of the forces of the law'").

206. *Id.* at 450.

surcease."[207] Police developed an "oppressive atmosphere" that offered the individual "no respite from the atmosphere of domination."[208] The sense of hopelessness in *Miranda*, of course, was from police intimidation, rather than the hopelessness of not being released. All the same, the Court's shift in viewing hopelessness from liability to asset represents a dramatic change in *Miranda* analysis.

C. *Fields*'s Third Ground Supporting Its Conclusion that Imprisonment Alone is Not Enough to Create *Miranda* Custody Ignored the Authority Law Enforcement Has to Affect a Prisoner's Liberty

The final ground *Fields* offered for distinguishing incarceration from *Miranda* custody focused on the fact that an inmate, unlike a mere arrestee, knows that the questioning officers "probably lack authority to affect the duration of his sentence."[209] This statement is true as far as it goes, but does not address the entire dynamic playing out between officer and suspect. Noting that officers likely cannot affect a prisoner's current sentence ignores the power those officials have over the case that is the subject of questioning, which could dramatically affect the inmate's long term liberty.

To understand the hold police might have on an inmate, one need look no further than the *Fields* case itself, where deputies were questioning an inmate who was serving a "45-day sentence" in county jail for disorderly conduct.[210] The crime they were asking about ultimately resulted in *Fields* receiving a sentence of "10 to 15 years of imprisonment" for sexual conduct with a twelve-year-old.[211] The differences between the two punishments were significant. The fact that the deputies could not shorten Fields's 45 days would be eclipsed by the prospect of their causing him to serve a sentence potentially over 120 times longer in duration. Further, the deputies' inability to reduce Fields's sentence is a trifle compared to the fact that they hold the threat of state prison over his head. Finally, the damage to reputation occasioned by a disorderly conduct charge is dwarfed by a potential sex crime conviction. *Fields* was not an isolated case; in *Perkins*, police questioned an inmate about murder while he was being held on a charge of aggravated battery.[212] As they sat in the conference room, the deputies still had the kind of control over "the suspect's fate" that the Court had previously found could pressure a suspect into making an incriminating statement.[213] Thus, the *Fields* Court's statement about officials failing to

207. *Id.* at 451.

208. *Id.*

209. Howes v. Fields, 132 S. Ct. 1181, 1184 (2012).

210. Amicus Brief, *supra* note 120, at 2.

211. *Id.*; *Fields*, 132 S. Ct. at 1185.

212. Illinois v. Perkins, 496 U.S. 292, 294 (1990).

213. *Id.* at 297. Such high stakes might partially explain Fields's outburst when confronted with

affect the current jail term was technically true but, in the bigger picture, irrelevant.

D. In Rejecting The Court of Appeals' "Questioning in Private" Element, *Fields* Undermined *Shatzer*'s Premise that Prison is a Break from Custody

The *Fields* Court took issue with the Court of Appeals' contention that taking a prisoner aside for questioning was more intrusive than interviewing him in the presence of other prisoners.[214] *Fields* reached the opposite conclusion, offering the understatement that taking an inmate out of prison "does not generally remove the prisoner from a supportive atmosphere."[215] The Court recognized that "[f]ellow inmates are by no means necessarily friends" and might even be "hostile" and "react negatively to what the questioning reveals."[216] The Court even alluded to the particular danger child molesters faced in prison, asking, "In the present case, for example, would respondent have felt more at ease if he had been questioned in the presence of other inmates about the sexual abuse of an adolescent boy?"[217] The Court concluded, "Isolation from the general prison population is often in the best interest of the interviewee . . . ."[218] The Court's argument here was compelling, yet its very force undermined suppositions made in precedent.

The fact that returning an inmate to prison amounts to placing that person in a hostile environment where others are hardly friends and might even subject him to physical harm cuts against the Court's conclusion in *Shatzer* that returning a suspect to the general prison population constitutes a break in custody.[219] Removing an individual from police questioning only to place him in a situation where he risks physical brutality simply moves him out of the frying pan and into the fire. Instead of respite from police coercion, an inmate merely trades the stress of custody for the danger of violence.

The Court's conclusion that Fields's return to the general prison population would simply return him to his "usual environment" and his "accustomed surroundings and daily routine"[220] takes on quite a different meaning when juxtaposed with its recognition of the intimidating environment of prison, particularly for those who fear dire harm should the truth reach fellow inmates. The Court's own assertions have therefore

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the sex crime allegation. *Fields*, 132 S. Ct. at 1186.

214. *Fields*, 132 S. Ct. at 1191–92.

215. *Id.* at 1191.

216. *Id.*

217. *Id.* at 1191–92.

218. *Id.* at 1192.

219. Maryland v. Shatzer, 130 S. Ct. 1213, 1225, 1227 (2010).

220. *Fields*, 132 S. Ct. at 1194 (quoting *Shatzer*, 130 S. Ct. at 1224).

undermined *Shatzer*'s holding that a return to the general prison population acts as an effective "break" in *Miranda* custody.[221] Moreover, the reasoning advanced for the argument that taking a prisoner aside for questioning does not create custody casts a shadow over the Court's own determination that imprisonment, without more, is insufficient to constitute *Miranda* custody.[222]

V. Conclusion

It has been reported that the United States "leads the world in producing prisoners," possessing "almost a quarter of the world's prisoners" while having "less than 5 percent of the world's population."[223] The Court has now determined that this population, amounting to millions of people behind bars,[224] is not subject to the pressures of *Miranda* custody while merely serving time in prison.[225] Even subjecting one such prisoner to harsh questioning by armed deputies using profanity did not create a government obligation to provide *Miranda* warnings.[226] Therefore, when it comes to *Miranda* protections, the millions serving time might find themselves in a no-man's land where custody fails to materialize whether the inmate is surrounded by the general prison population or is subject to intensive government interrogation.[227]

Furthermore, the grounds provided in *Fields*, and proclaimed as "strong," to support the conclusion that *Miranda* is farther from prisoners' reach than it is for those in the "outside world," raise troubling questions.[228] In urging that inmates, unlike persons picked up for questioning, are spared the "shock" of arrest, the Court opened *Miranda*'s door to assessing the emotional state of those questioned and necessarily required the recognition of prior contact with law enforcement, a factor earlier rejected as involving

221. *Shatzer*, 130 S. Ct. at 1225, 1227.

222. *Fields*, 132 S. Ct. at 1191.

223. Adam Liptak, *U.S. Prison Population Dwarfs That of Other Nations*, N.Y. TIMES, April 23, 2008, http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all.

224. *Id.* ("The United States has, for instance, 2.3 million criminals behind bars.").

225. *Fields*, 132 S. Ct. at 1191. *Fields* concluded, "[S]ervice of a term of imprisonment, without more, is not enough to constitute *Miranda* custody." *Id.*

226. *Id*. at 1193.

227. The "express questioning" the deputies performed in *Fields* would satisfy the Court's definition of "interrogation" in *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980). *Innis* concluded,

> *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Id. (footnote omitted).

228. *Fields*, 132 S. Ct. at 1190–91.

subjectivity.[229] Such subjectivity could cloud the clarity the Court has so long preserved for *Miranda,* resulting in confusion for police and courts.[230] The Court's second rational—that prisoners were safe from lures for prompt release—attempts to make a strength out of hopelessness, a concept that would have been completely foreign to the *Miranda* Court, who viewed hopelessness as a weakness rather than a strength.[231] Finally, the Court's third ground, that inmates are not vulnerable to law enforcement coercion because they understand that police cannot affect their current sentence, demonstrates a view so cramped that it cannot see the full consequences of speaking with officials.[232] Known to both the officer and the inmate, even if unrealized by the Court, is that law enforcement has enormous power over the long-term liberty of the suspect being questioned.[233] Failure to account for common sense concerns, such as potential prison time for the crime that is the subject of questioning, taints the *Miranda* analysis with artificiality.

Additionally, the *Fields* Court doubted that questioning an inmate in private might help convert an interview into custodial interrogation.[234] Here, the Court's candid assessment of the tensions inherent in questioning an inmate in front of his or her fellow prisoners, including its allusion to prisoners' dim view of sex offenders, might have been too convincing.[235] The ramifications of such reasoning undercut the Court's own precedent proclaiming that return to the prison population for two weeks constitutes a break in *Miranda* custody,[236] because hostility from persons who are "by no means necessarily friends"[237] destroys the picture of normality created by library visits and recreation periods.[238] *Fields* has created more uncertainty by undermining the reasons underpinning the Court's own rulings.

The *Fields* opinion has thus managed to distance prisoners from *Miranda*, whether they find themselves serving time with the general population or being questioned by police. The Court accomplished this feat by presenting arguments that brought further confusion to its *Miranda* precedent. If there is strength in hopelessness, then officers and judges, who find themselves scratching their heads over *Fields*'s rationales, might be stronger for facing the hopeless prospect of understanding this recent *Miranda* decision.

229. *Id.* at 1190–91, Yarborough v. Alvarado, 541 U.S. 652, 666–67 (2004).
230. *Alvarado*, 541 U.S. at 667.
231. Miranda v. Arizona, 384 U.S. 436, 451, 457 (1966).
232. *Fields*, 132 S. Ct. at 1191.
233. *See supra* notes 210–13 and accompanying text.
234. *Id.*
235. *Id.*
236. Maryland v. Shatzer, 130 S. Ct. 1213, 1223, 1224 (2010).
237. *Fields*, 132 S. Ct. at 1191.
238. *Shatzer*, 130 S. Ct. at 1225.