No. _____

IN THE

Supreme Court of the United States

RALPH DEON TAYLOR

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Rhode Island v. Innis defined interrogation, for the purposes of *Miranda*, to include "not only to express questioning, but also to any words or actions on the part of the 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." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (emphasis added).

Does confronting a suspect with the mounting evidence against him fall outside the definition of interrogation because it is unlikely to elicit an incriminating response, as the Ninth Circuit, as well as the First, Fourth, and Eighth Circuits have held, or does such conduct serve no legitimate administrative purposes "attendant to arrest and custody" and irresistibly call for a response, and thus constitute interrogation, as the Second and Third Circuits, and a number of state courts, have held?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Federal Statutes

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Ralph Deon Taylor petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

OPINION BELOW

The Ninth Circuit's order denying Mr. Taylor's appeal was not published. App. 1a. The district court issued no written opinion related to the subject of this Petition.

JURISDICTION

The Ninth Circuit issued its order denying Mr. Taylor a petition for panel rehearing on May 2, 2018. App. 5a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Mr. Taylor was charged in federal court for being a felon in possession of ammunition and a firearm in violation of 18 U.S.C. § 922(g). He filed a pre-trial motion to suppress his statements, and the evidence found during a search of his home. The facts, which were largely undisputed, were as follows:

Officers originally came to Mr. Taylor's house to conduct a fraud investigation; they knew he was on probation and had prior felony convictions. When they approached his door, Mr. Taylor initially told them to leave, and asked if

they had a warrant. When officers confirmed that they knew Mr. Taylor was on probation with a search condition, Taylor relented and allowed officers to enter.

Once inside, officers began asking probing about a suspected counterfeit scheme. Mr. Taylor admitted he used a mailbox to which counterfeit money orders had been addressed. The officer asked if he could search the apartment. Mr. Taylor said yes, but not a particular bedroom, which was his son's. The searching continued, as did the questioning about the counterfeit.

As officers were completing their search, one asked about entry into a locked bedroom, not the son's, and Mr. Taylor said he didn't have a key. The agent accused him of lying. Mr. Taylor reached into his pocket and pulled out a car key and started walking to the door. The agent tapped him on the shoulder and told him to come back inside. He told Mr. Taylor to give him the truck key, and Taylor complied. Everyone waited while the search continued.

At some point, Mr. Taylor said he had the key to the bedroom of interest. He began walking to the kitchen, at which point the officer "secured" him "by the arm" and told him he couldn't go to the kitchen by himself. He made Mr. Taylor describe where the key was, and sent another agent to retrieve it He then stood guard over Mr. Taylor while officers searched the locked bedroom.

Officers first located a jacket and showed it to Mr. Taylor, who confirmed the jacket was his. They then found ammunition. The agent asked him about it, and he acknowledged it, admitting that he was not supposed to possess ammunition. Finally, agents found a rifle. The agent "confronted"--his word, from his report--Mr.

Taylor with the rifle. "He looked down, and stated 'it was over.'" He made additional statements, but those statements were suppressed for purposes of trial.

At no time to that point was Mr. Taylor advised of his *Miranda* rights. At the end of this encounter, Mr. Taylor was arrested.

The district court permitted the government to introduce Mr. Taylor's statements, and his reaction to being "confronted" with the gun, at trial. The government presented the evidence to the jury as proof of Mr. Taylor's connection to the gun; there was no forensic or other evidence tying Mr. Taylor to that gun, and there was evidence that multiple people lived in the house. Mr. Taylor was found guilty.

On appeal, Mr. Taylor challenged the district court's admission of his statements. With respect to the "it's all over" statement, the appellant challenged the government's contention that his statement was spontaneous and did not constitute interrogation.

The Ninth Circuit affirmed. App. 1a. With respect to the issue presented here, the Court held that:

> Volunteered statements of any kind are not barred by the Fifth Amendment" and failure to give Miranda warnings does not affect the admissibility of such statements. *Id.* at 300 (quoting *Miranda*, 384 U.S. at 478). Here, Taylor's third statement, "it's all over," was spontaneous and not the result of police interrogation. Even if we assume that Taylor was in custody for Miranda

purposes while the officers were in his apartment, the district court did not err in admitting his spontaneous statement. *See id.*

App. 3a.[1]

The Court denied a petition for panel rehearing on May 2, 2018. App. 5a.

REASONS FOR GRANTING THE WRIT

The petition for a writ of certiorari should be granted.

1. Interrogation, for the purposes of *Miranda*, refers "not only to express questioning, but also to any words or actions on the part of the 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." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). Almost immediately after *Innis* was decided, courts began to debate one particular application of *Innis*: whether an officer who confronted a suspect with evidence (real or made up) suggesting he committed a crime, but did not directly ask the suspect any question about that crime, had "interrogated" the suspect.

The Ninth Circuit has firmly concluded that such conduct does not constitute interrogation. Describing the evidence against a person, the Ninth Circuit has held, fall within *Innis*'s exception for conduct and actions that are "attendant to arrest and custody" because they merely "inform[ ] a defendant of the circumstances which contribute to an intelligent exercise of his judgment." *United States v. Crisco*, 725

[1] It found that any error in admitting two other statements was harmless; those two statements are not at issue in this petition.

F.2d 1228, 1232 (9th Cir. 1984); *United States v. Moreno-Flores*, 33 F.3d 1164, 1169 (9th Cir. 1994) (informing suspect that they had seized 600 pounds of cocaine and that the suspect was "in serious trouble" was properly characterized as a statement "normally attendant to arrest and custody," in that they informed the suspect why he was being held). In that such statements inform, and do not "call for or elicit an incriminating response," *Shedelbower v. Estelle*, 885 F.2d 570, 573 (9th Cir. 1989), such conduct does not constitute interrogation under the Ninth Circuit's rule.

The First, Fourth, and Eighth Circuits have cases with similar holdings. *United States v. McGlothen*, 556 F.3d 698, 701 (8th Cir. 2009) (officer who showed defendant a gun found during a search of his home, and told him that he was being arrested, did not intentionally elicit incriminating information); *United States v. Payne*, 954 F.2d 199, 200-01 (4th Cir. 1992) (declaratory statement that police had found gun in defendant's house neither sought or required a response and was not reasonably likely to elicit incriminating information); *United States v. Conley*, 156 F.3d 78, 83 (1st Cir. 1998).

State and federal courts alike have been critical of this tack. *See State v. Grant*, 944 A.2d 947 (Conn. 2008) ("Several court have expressed doubts as to whether the [Ninth Circuit's rule in *Crisco*] is consistent with *Innis*"); *see Anderson v. Smith*, 751 F.2d 96, 104 (2d Cir. 1984) (questioning the ongoing validity of cases stating that confronting a suspect with evidence is not interrogation after *Innis*, and doubting the correctness of the holding of *Crisco*); *Nelson v. Fulcomer*, 911 F.2d 928, 935-36 (3d Cir. 1990) (noting tension between cases holding that confronting

suspect with incriminating evidence constitutes interrogation and cases holding that, if conduct was attendant to arrest and custody, it was not interrogation); *United States v. Pena*, 897 F.2d 1075, 1081 n.16 (11th Cir.1990) ("This practice of permitting interrogators to apprise a suspect of the evidence against him as a prelude to asking him to reconsider his decision to remain silent has been brought into doubt by *Rhode Island v. Innis*."). And the Second and Third Circuits have declined to follow the Ninth Circuit. *United States v. Szymaniak*, 934 F.2d 434 (2d Cir. 1991) (confronting a suspect with information gathered during an investigation is calculated to elicit an incriminating response); *Nelson v. Fulcomer*, 911 F.2d 928, 935 (3d Cir. 1990) (confrontation with incriminating evidence is "precisely the kind of psychological ploy that *Innis*'s definition of interrogation was designed to prohibit"), *superseded by statute as recognized in United States v. Lafferty*, 503 F.3d 293, 300 (3d Cir. 2007).

Several states have likewise parted ways with the Ninth Circuit. *E.g.*, *People v. Ferro*, 472 N.E.2d 13, 16-17 (N.Y. 1984) (placing incriminating information in front of suspect held to be interrogation, where the maneuver had no legitimate administrative purpose); *Drury v. State*, 793 A.2d 567, 571-73 (Md. Ct. App. 2002); *Pannell v. State*, 7 So. 3d 277, 284 (App. Miss. 2009) (interpreting *Balfour v. State*, 580 So. 2d 1203, 1208-09 (Miss.1991)); *State v. Grant*, 944 A.2d 947, 967 (Conn. 2008); *State v. Nixon*, 599 A.2d 66, 67 (Me. 1991) (confronting suspect with evidence was interrogation); *State v. Uganiza*, 702 P.2d 1352, 1355 (Haw. 1985).

Indeed, the rule for suppression would be different if Mr. Taylor had been charged in Los Angeles Superior Court just a few blocks from the federal courthouse in Los Angeles where he was ultimately charged. *See People v. Sims*, 5 Cal.4th 405, 443-44 (1993) (confronting defendant with incriminating evidence, which was nonresponsive to defendant's inquiries about procedure and served no legitimate purpose incident to the defendant's arrest or custody, constituted interrogation).

Justice White first noted this divergence in the interpretation of *Innis* in his dissent from denial of the writ of certiorari in *Lewis v. Florida*, 486 U.S. 1036 (1988). Decades later, this split continues unabated, with neither side moving the needle. It is a mature split on a question that arises frequently, in an area where clear instruction to law enforcement is desirable. This Court should therefore grant the writ of certiorari in this case to resolve the question.

2. Moreover, the Ninth Circuit's rule--as applied here--reaches the wrong result. The "other than those normally attendant to arrest and custody" portion of *Innis* was properly applied in *Pennsylvania v. Muniz*, 496 U.S. 582, 600 (1990), where the Court held that booking questions reasonably related to a state's administrative concerns do not constitute interrogation. *Id.* That is, even if the police have reason to think that, perhaps, a particular drunk driving suspect may have trouble recalling basic biographical information like date of birth or phone numbers, that doesn't lessen the police officer's legitimate administrative need for the information. *Innis*'s exception is necessary because, once an individual is in custody, his custodians need to continue to interact in an administrative capacity.

That requires asking questions to ensure the safety and health of both suspect and law enforcement, giving the suspect information about court dates, providing copies of charging documents, arranging phone calls, discussing bail, and the like. In some subset of cases, those legitimate administrative exchanges may result in the suspect disclosing inculpatory information. *Innis* intended to make clear that law enforcement could still complete such administrative transactions without providing *Miranda* warnings.

The Ninth Circuit's rule takes this rationale too far, however. It includes confronting a suspect with evidence under the rubric of conduct "normally attendant to arrest and custody." But it is the rare case where confronting a suspect with the evidence against him has any legitimate administrative purpose. And, indeed, the Ninth Circuit made no attempt to justify its exception by reference to a legitimate administrative need, but, instead, reasoned that a suspect should be fully informed so that he can make a reasonable judgment about whether to speak to investigators. *Crisco*, 725 F.2d at 1232. This rationale would swallow the rule in *Innis*, however; all sorts of psychological pressure and manipulation could be cast as an attempt to get a recalcitrant suspect to make an informed decision.

Moreover, the Ninth Circuit is blind to reality when it claims that confrontation with evidence merely informs, and does not demand or invite a response. Accusing a person of a crime may not invite a response in precisely the same way that posing a question does. But it is human nature to respond to an accusation with a defense, or an excuse, or an explanation. As the mountain of cases

attempting to suppress such statements suggests, the desire to explain when accused of a crime is nearly irresistable. It is precisely the kind of psychological ploy *Innis* attempted to thwart.

The rule that California applies in *People v. Sims* is simple and easy to articulate: Unless done for a proper administrative purpose, confronting an in-custody suspect with the evidence against him is interrogation. The writ should be granted here in order to correct those Circuits that have gone astray.

3. Finally, Mr. Taylor's case presents an excellent vehicle to consider this question. The relevant facts of the case are undisputed--the officer wrote in his own report that he confronted Mr. Taylor with the weapon found in his house. The officer knew Mr. Taylor was a felon, meaning that he knew any firearms possession was a crime. In other words, confronting Mr. Taylor with a firearm *was* accusing him of a crime. And Mr. Taylor's statement that "It's all over" quickly and directly followed that confrontation; there is no question of causation. The Ninth Circuit's conclusion that Mr. Taylor's statement was spontaneous directly implicates the rule in *Crisco*, and demonstrates how far from *Innis* the Ninth Circuit's rule has strayed. Moreover, the government in this case made no argument below that the admission of that statement at trial was harmless; indeed, the prosecution made that statement a centerpiece of its closing. Thus, the holding was necessary to the decision rejecting Mr. Taylor's request for a new trial.

For the foregoing reasons, the petitioner respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

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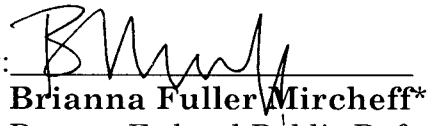
DATED: July 24, 2018

By: 
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INDEX TO APPENDICES