

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHNATHAN HOLT, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

STEVEN R. JAEGER, ESQ.
Counsel of Record for Petitioner
THE JAEGER FIRM, PLLC
23 ERLANGER ROAD
ERLANGER, KENTUCKY 41018
(859) 342-4500
(859) 342-4501
srjaeger@thejaegerfirm.com

SUBMITTED: January 23, 2019

QUESTIONS PRESENTED

Under the objective analysis criteria established by *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny, must a court evaluate all of the circumstances surrounding the interrogation, including a lack of personal mobility, when deciding whether a person is in custody when interrogated by law enforcement?

TABLE OF CONTENTS

	<u>Page</u>
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS APPLICABLE TO ISSUES RAISED.....	2
FEDERAL STATUTES, RULES AND GUIDELINES APPLICABLE TO ISSUES	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION	5
I. Law Enforcement agents, lower courts, and the criminal justice system will benefit from further guidance from this Court regarding the objective custody analysis required by <i>Miranda</i> and its progeny	6
A. Supreme Court decisions clearly establish that the lower courts must consider the totality of circumstances when performing the <i>Miranda</i> custody analysis.....	7
B. Immobility of a person being interrogated is an objective circumstance that should be a factor considered when determining the custodial status during interrogation by law enforcement agents.....	8
C. The Sixth Circuit analysis is incomplete, incorrect, and contrary to precedent established in other Circuit Courts of Appeals.	10
1. The Sixth Circuit analysis is incomplete and overweights the statement of law enforcement that a person is free to leave.....	10

2. The Second, Fifth and Ninth Circuits expressly recognize that single factors are not determinative of the custodial determination.....	11
CONCLUSION.....	12

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<i>Berkemer v. McCarty</i> , 468 U.S. 420 (1984).....	9, 11
<i>Dickerson v. United States</i> , 530 U.S. 428 (2000)	5
<i>J.D.B. v. North Carolina</i> , 564 U.S. 261 (2011)	9
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966),	ii, 5, 6, 7, 8,
.....	9, 11, 12
<i>Oregon v. Mathiason</i> , 429 U.S. 492 (1977)	5, 7
<i>Stansbury v. California</i> , 511 U.S. 318 (1994)	6, 7, 8
<i>Thompson v. Keohane</i> , 516 U.S. 99 (1995).	6, 7
<i>United States v. Cavazos</i> , 668 F.3d 190 (5th Cir. 2012)	11
<i>United States v. I.M.M.</i> , 747 F.3d 754 (9th Cir. 2014).....	11
<i>United States v. Newton</i> , 369 F.3d 659 (2nd Cir. 2004)	12
<i>United States v. Panak</i> , 552 F.3d 462 (6th Cir. 2009)	10
<i>United States v. Swanson</i> , 341 F.3d 524 (6th Cir. 2003)	10
<i>Yarborough v. Alvarado</i> , 541 U.S. 652 (2004).....	9

CONSTITUTION AND STATUTES

U.S. Const. amend V.....	2, 4, 5
28 U.S.C. §1254(1)	1
28 U.S.C. §1291.....	1

RULES

United States Supreme Court Rule 12	1
---	---

United States Supreme Court Rule 13.1 1

United States Supreme Court Rule 13.3 1

OTHER

Dr. Jennifer Bronson and Laura M. Maruschak, BJS Statisticians, and Marcus Berzofsky of RTI International, *Disabilities Among Prison and Jail Inmates 2011-12*, United States Department of Justice, Bureau of Justice Statistics, December 2015, at page 3..... 8

Merriam-Webster, Inc., *Merriam-Webster's Collegiate Dictionary, Eleventh Ed.*, (2003) 9

PETITION FOR A WRIT OF CERTIORARI

Johnathan Holt respectfully petitions for a Writ of Certiorari to review the Opinion of the United States Court of Appeals for the Sixth Circuit affirming the District Court's denial of a motion to suppress statements made during law enforcement's interrogation of Mr. Holt and the convictions resulting therefrom.

OPINIONS BELOW

The Sixth Circuit's November 02, 2018, panel opinion affirming Mr. Holt's convictions is unpublished and attached hereto at Appendix 1. The District Court's Judgment of Conviction in a Criminal Case, entered on January 27, 2017, is unpublished and attached hereto at Appendix 2. The Opinion and Order of the District Court denying Mr. Holt's motion to suppress statements was entered November 12, 2015, and is attached hereto at Appendix 3.

JURISDICTION

Jurisdiction was generally conferred upon the Court of Appeals pursuant to 28 U.S.C. §1291. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1) and United States Supreme Court Rule 12.

The Opinion of the United States Court of Appeals for the Sixth Circuit was entered on November 02, 2018. This petition is timely filed pursuant to Supreme Court Rule 13.1 and 13.3.

CONSTITUTIONAL PROVISIONS APPLICABLE TO ISSUES RAISED

The Fifth Amendment to the United States Constitution provides in relevant part that “[n]o person ... shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend V.

FEDERAL STATUTES, RULES AND GUIDELINES APPLICABLE TO ISSUES

None applicable to this petition.

STATEMENT OF THE CASE

A drug dealer, Quincy Battle, is shot and killed during a drug transaction or attempted robbery at his home on March 24, 2010. The government's investigation runs cold until late 2010. Persons associated with the Short North Posse are implicated in the murder. It is undisputed that Johnathan Holt is not a member of the Short North Posse, a criminal enterprise that operates from 2005 to 2014.

On July 30, 2010, Mr. Holt becomes paralyzed after being shot in his back. He suffers paralysis from his chest down. He can self-propel short distances but cannot open doors alone.

A grand jury returns a twenty-five count Indictment charging seventeen defendants with multiple offenses on June 23, 2014. The offenses include RICO conspiracy, murders in aid of racketeering, robbery, controlled substance

distribution, witness tampering, acts of extortion, and witness retaliation. Mr. Holt is not charged in this initial Indictment.

Four years after the shooting of Mr. Battle, and as part of the government's continuing investigation of the Short North Posse and Battle murder, Johnathan Holt is subpoenaed to appear at the federal courthouse in the Southern District of Ohio. The supposed purpose of the subpoena is for Mr. Holt to give a DNA sample, fingerprints and a photograph. In reality, law enforcement plans to interrogate him.

Mr. Holt responds to the subpoena on August 28, 2014, accompanied by his girlfriend/caregiver. They are confronted on the first floor by law enforcement agents after entering the main door and going through security. At least one law enforcement agent escorts Mr. Holt to the fourth floor of the courthouse and into a satellite office of the United States Attorney. Holt's girlfriend remains in the suite lobby as Mr. Holt is taken into an interior and secure office, approximately 20 by 15 feet in size. Inside the room is a table. A federal prosecutor, two federal agents, and two state police detectives are waiting to question him.

During the suppression hearing held pursuant to Mr. Holt's motion to suppress, the Assistant U.S. Attorney testifies that law enforcement had a plan regarding Mr. Holt. The first objective was to obtain the items requested in the subpoena; the second objective was to obtain a statement from Mr. Holt. The AUSA admits the ultimate goal was to obtain Mr. Holt's cooperation against people they

believed organized and supervised the Battle and other murders. There is no doubt that the plan was to question Mr. Holt.

Law enforcement begins interrogating him within a few minutes of his arrival. The questioning intensifies as the interrogation progresses. Mr. Holt makes several admissions against his interests during the interview which is about two hours in duration. The interrogation is not recorded (contrary to the policies in place governing local law enforcement officers) because the batteries are dead in the recording device. A summary is made about 15 days later by a local agent, who then destroys his notes.

A thirty-eight count superseding Indictment is returned on October 20, 2014. Mr. Holt is charged with attempted possession with attempt to distribute cocaine (Count 17), use of a firearm during and in relation to a drug trafficking crime (Count 18), murder in aid of racketeering (Count 19), and murder through use of a firearm during and in relation to a drug trafficking crime (Count 20). Relevant to this petition, he files a motion to suppress his August 28, 2014, statements arguing a violation of his Fifth Amendment rights. The government opposes the motion, and a suppression hearing is held November 09, 2015. The District Court denies the motion on November 12, concluding that Mr. Holt was not subject to a custodial violation. (Opinion and Order, attached at Appendix 3.) When additional facts come to light during trial, Mr. Holt renews his motion to suppress. The District Court finds that the circumstances surrounding the interview come "... perilously close to

amounting to a constitutional violation,” but again denies the suppression motion.

Transcript of Jury Trial, Page ID## 15696-699), at App. 4, pages 35a-38a.

Jury trial commences on November 28, 2016. On December 08, a verdict is returned finding Mr. Holt guilty of murder in aid of racketeering for the killing of Mr. Battle, and guilty of murder through use of a firearm during and in relation to a drug trafficking crime. On January 27, 2017, a Judgment is entered sentencing Mr. Holt to life without parole for the murder in aid of racketeering, and to 25 years consecutive imprisonment for the use of a firearm in relation to the drug trafficking crime.

On appeal before the Sixth Circuit Court of Appeals, the convictions were affirmed. The Court concluded that Mr. Holt was not in custody when he was questioned, and that the district court had not committed error.

REASONS FOR GRANTING THE PETITION

Miranda v. Arizona, 384 U.S. 436, 467 (1966) recognizes that interrogations of persons in custody present “inherently compelling pressures.” There are “coercive aspects” to law enforcement interrogations whenever they occur. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). Where law enforcement’s interrogation of an individual occurs while the person is in custody, this Court has acknowledged that there is a “heightened risk” that the individual’s statements obtained may not be voluntary. *Dickerson v. United States*, 530 U.S. 428, 435 (2000). Because of such risk to an individual’s Fifth Amendment right not to self-incriminate, law enforcement is required to give the *Miranda* warnings to a person to be interrogated in those

situations where there is “such a restriction on a person’s freedom of movement as to render him ‘in custody.’ ” *Stansbury v. California*, 511 U.S. 318, 322 (1994) *per curiam*.

This Court has given guidance to the lower courts when they are called upon to determine whether there is a custodial interrogation requiring the *Miranda* advice. The lower courts are instructed to first examine the totality of circumstances surrounding the interrogation. Once those circumstances are determined, the second inquiry is to resolve whether a reasonable person would have felt that he or she was free to terminate the interrogation and leave. The test is objective, and the court must decide if there is an arrest or, as in this case, whether there was a restraint on the freedom of movement associated with formal arrest. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

In this case, the District Court determined that Mr. Holt was not in custody when questioned, and his statements were not suppressed. App. 3, page 31a. The Court found Mr. Holt’s freedom of movement was not restricted in any way. It emphasized that the most important factor in its analysis was that Mr. Holt had was told by law enforcement that he was not under arrest, App. 3, page 28a. The Sixth Circuit affirmed the District Court. App. 1. That court found the most important factor in its analysis was that Holt was told he did not need to answer any questions and was free to leave. App. 1, page 7a. Neither court analyzed the impact that Mr. Holt’s physical immobility had on his ability to terminate the interrogation and leave the room even if he wanted to do so. This objective circumstance should have been considered. This Court should grant review of these decisions for the reasons stated below.

I. Law enforcement agents, lower courts, and the criminal justice system will benefit from further guidance from this Court regarding the objective custody analysis required by *Miranda* and its progeny.

Persons suspected of being involved in criminal conduct are interviewed and interrogated daily across this country by local, state and federal law enforcement agents. The statements given by those persons interrogated often result in confessions that lead to criminal convictions and ultimate incarceration or imprisonment. This Court has established a basic framework to protect individuals from coercive interrogations by law enforcement to ensure that admissions and confessions obtained are freely, knowingly and intelligently given. *Miranda*, 384 U.S. at 475-76 (1966). The *Miranda* warnings and advice of rights are thus required “only where there has been such a restriction on a person’s freedom as to render him ‘in custody.’ ” *Mathiason*, 429 U.S. at 495 (1977) (*per curiam*). An objective inquiry must be made to correctly perform the custody analysis. *Keohane*, 516 U.S. at 112 (1995). Moreover, the court is required to “examine all of the circumstances surrounding the interrogation.” *Stansbury*, 511 U.S. at 322 (1994) (*per curiam*). Any circumstance that “would have affected how a reasonable person” in the suspect’s position “would perceive his or her freedom to leave” must be examined. *Id.*, at 325. *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004), also affirms that “custody must be determined on how a reasonable person in the suspect’s situation would perceive his circumstances.” Now, this Court must move beyond the basic guidelines established in *Miranda* and further refine the objective criteria required for a court to properly analyze the lawfulness of a custodial interrogation in particular circumstances, including when a person’s obvious disabilities restrict their freedom of movement. Such refinement is of national importance because police interrogations are wound into the fabric of state and federal prosecutions.

A. Supreme Court decisions clearly establish that the lower courts must consider the totality of circumstances when performing the *Miranda* custody analysis.

The directive of this Court is clear. Where there is a dispute concerning the custodial status of a person being interrogated, the ultimate question to be answered, absent arrest, is

whether there is a restriction on that person's freedom of movement as to render him in custody. *Stansbury*, 511 U.S. at 322. The circumstances within each case influence that decision, and **any circumstance** (emphasis supplied) that affects how a reasonable person would perceive his freedom to leave must be examined. *Id.*, at 325. The objective inquiry is designed to give clear guidance to law enforcement and the courts and requires a fact-specific examination of the circumstances. *Alvarado*, 541 U.S., at 668. When the court ignores an objective circumstance that impacts a reasonable person's perception of his freedom to terminate and leave the interrogation, that court has not considered the totality of the circumstances.

The United States Department of Justice, Bureau of Justice Statistics, published a Special Report in December 2015. The Report was authored by Dr. Jennifer Bronson and Laura M. Maruschak, BJS Statisticians, and Marcus Berzofsky of RTI International. The report, entitled "Disabilities Among Prison and Jail Inmates 2011-12," found that 10.1% of the then prison population suffered from ambulatory disabilities. Attached hereto as App. 5, page 41a. One must wonder how many of those convictions resulted from statements made by suspects during police-controlled interrogations in which the individual's inability to leave the interrogations played a factor but was not considered in making the custodial analysis. No data can be found to answer that query. However, guidance from this Court that immobility factors are objective circumstances falling within the totality of circumstances consideration required by law, would ensure that the procedural safeguards of *Miranda* are protected and extended to all persons, including those with immobility disabilities.

B. Immobility of a person being interrogated is an objective circumstance that should be a factor considered when determining the custodial status during interrogation by law enforcement agents.

Paraplegia is a paralysis of the lower half of the body marked by both leg involvement. Merriam-Webster's Collegiate Dictionary, Eleventh Ed., published by Merriam-Webster, Inc., 2003. Considering the condition's impact on a person's ability to leave a law enforcement-controlled interrogation does not compromise the objective nature of the custody analysis. Instead, it simply adds to the validity of the objective inquiry performed by a court when reviewing the nature of an individual's interrogation by law enforcement.

In *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), this Court considered whether the age of a child being interrogated by the police was relevant to the *Miranda* custody analysis. The Court's reasoning is instructive to a determination regarding the instant issue when it re-emphasized the objective nature of the analysis. The Court stated:

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** (emphasis supplied), 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. *Id.*, at 271.

Examining age as a factor, this Court concluded that consideration of such a factor did not require law enforcement to consider circumstances unknowable to them. Age and perceptions of the juvenile were apparent. Age as a factor did not require the law enforcement agents to anticipate either frailties or idiosyncrasies of the person they were questioning. *Id.*, at 274, relying upon *Berkemer v. McCarty*, 468 U.S. 420, 430 (1984) and *Alvarado*, 541 U.S. at 662. The Court concluded that the age factor was an objective one worthy of consideration and was thus relevant to the totality of the circumstances to be considered.

The immobility of an individual is analogous to age in the custody analysis. Paralysis, confinement in a wheelchair, and limited abilities to independently move also give rise to

commonsense determinations. The condition is objectively apparent to the questioners. It does not give any cause for the law enforcement agents to speculate about the suspect's mindset at the time of the interrogation. The paralysis impacts the suspect's ability to move about the interrogation room and to independently exercise his option to leave. Whether such restrictions are significant under the totality of the circumstances is a question to be considered and determined. It cannot be ignored under the totality of circumstances, and this Court should grant review to allow this issue to be more fully developed.

C. The Sixth Circuit analysis is incomplete, incorrect, and contrary to precedent established in other Circuit Courts of Appeals.

1. The Sixth Circuit analysis is incomplete and overweighs the statement of law enforcement that he is free to leave.

The Sixth Circuit Court of Appeals establishes certain factors to consider when examining the custodial status of a person being interrogated. Relevant factors to be considered are (1) the purpose of the questioning; (2) the place of the questioning as hostile or coercive; (3) the length of the questioning; (4) other indicia of custody such as whether the suspect was informed that questioning was voluntary or he was free to leave, whether he possessed unrestrained freedom of movement during questioning, and whether he acquiesced to law enforcement's request to answer questions. *United States v. Swanson*, 341 F.3d 524, 529 (6th Cir. 2003). That court further explains that "Most important to our analysis is that Swanson was explicitly told by [the officer] that he was not under arrest and that he did not have [t]o speak with him if he did not choose to." *Id.*, at 467-68.

Factors to consider are again addressed by the Sixth Circuit in *United States v. Panak*, 552 F.3d 462, 465 (6th Cir. 2009), and include consideration of whether there was any restraint on the individual's freedom of movement and whether the individual was told that he or she did

not need to answer the questions and could leave. The Sixth Circuit thus clearly places inordinate weight on the fact that if the person is told he is free to leave at any time and not need answer questions, then the person is not in custody and the *Miranda* warnings are not required.

Although the District Court recognizes that Mr. Holt is wheelchair-bound and needs mobility assistance when interrogated, it does not examine the impact of that immobility on his ability to leave and terminate the interrogation. The Sixth Circuit also acknowledges Mr. Holt is in a wheelchair and cannot open doors on his own, but likewise does not examine the impact of his condition on his ability to stop the questioning and leave. Without considering immobility and Mr. Holt's perspective of his situation during interrogation, the Sixth Circuit places inordinate weight on the fact that he was told he could not answer questions and could leave.

2. The Second, Fifth, and Ninth Circuits expressly recognize that single factors are not determinative of the custodial determination.

The Fifth Circuit clearly recognizes that a determination of whether a suspect is in custody for *Miranda* purposes depends upon a consideration of the totality of the circumstances. *United States v. Cavazos*, 668 F.3d 190, 193 (5th Cir. 2012). That court further explains "In engaging in the inquiry required by *Miranda*, the Court is mindful that no single circumstance is determinative." *Id.* It further holds that different statements made in different circumstances will have different meanings and differently affect the coercive element against which *Miranda* seeks to protect." *Id.*, at 195. The Sixth Circuit's failure to consider the circumstance of Mr. Holt's immobility and how that immobility impacted the coercive element of his interrogation is contrary to the *Cavazos* decisional framework.

The Sixth Circuit's failure to examine the immobility issue and Mr. Holt's perspective of his ability to leave under the circumstances is also contrary to the Ninth Circuit's decision in *United States v. I.M.M.*, 747 F.3d 754, 765 (9th Cir. 2014). The Ninth Circuit, relying on *Berkemer*, 468

U.S. at 442, determines that a court is required “to examine the totality of the circumstances from the perspective of a reasonable person in the suspect’s position.” This examination was not undertaken in Mr. Holt’s case.

Finally, the Sixth Circuit not only ignored the immobility issue, but also relied almost primarily on the fact that Mr. Holt was told he need not answer any questions and was free to leave after complying with the subpoenas to give physical evidence. The Second Circuit, on the other hand, says that the “free to leave” statement is but one factor to consider and does not establish that a person is not in fact in custody for *Miranda* purposes. *United States v. Newton*, 369 F.3d 659 (2nd Cir. 2004).

Review should be granted by this Court to better align the circuits.

CONCLUSION

For the above stated reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

STEVEN R. JAEGER
THE JAEGER FIRM, PLLC
23 Erlanger Road
Erlanger, Kentucky 41018
TELE: (859) 342-4500
EMAIL: srjaeger@thejaegerfirm.com
Counsel for Appellant - Defendant

Submitted: January 23, 2019

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHNATHAN HOLT, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

**APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI**

STEVEN R. JAEGER, ESQ.
Counsel of Record for Petitioner
THE JAEGER FIRM, PLLC
23 ERLANGER ROAD
ERLANGER, KENTUCKY 41018
(859) 342-4500
(859) 342-4501
srjaeger@thejaegerfirm.com

SUBMITTED: January 23, 2019

TABLE OF CONTENTS

	<u>Page</u>
APPENDIX 1 - Order of the United States Court of Appeals for the Sixth Circuit, affirming conviction (November 2, 2018)	1a – 12a
APPENDIX 2 – Judgment in a Criminal Case entered by the United States District Court, Southern District of Ohio (November 8, 2017)	13a – 18a
APPENDIX 3 – Opinion and Order of the United States District Court, Southern District of Ohio, denying motion to suppress (November 12, 2015).....	19a – 34a
APPENDIX 4 – Transcript of Trial Proceedings, pages 15696-15699 (April 28, 2017)	35a – 38a
APPENDIX 5 – U.S. Department of Justice, Bureau of Justice Statistics, Special Report (December, 2015)	39a – 51a