No. _____

IN THE
Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

v.

ERNESTO RUIZ,

Respondent.

On Petition for Writ of Certiorari to the Indiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In the decision below the Indiana Supreme Court held that statements Ernesto Ruiz made during a station-house interview were inadmissible under *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), because the interview constituted a "custodial interrogation." To support this conclusion—which the Court reached even though Ruiz freely drove himself to and from the station and was told he could leave at any time—the Court gave substantial weight to the station's ordinary security features and layout, namely a "circuitous path" to the interview room and a door that, while locked for entrance, was (unbeknownst to Ruiz) unlocked for exit. Pet. App. 8. In weighing such ordinary features as it did, the Indiana Supreme Court both contradicted holdings of the Seventh Circuit and deepened a preexisting split among the lower courts.

The question presented is:

When analyzing whether a station-house interview is a custodial interrogation under *Miranda*, do the ordinary security features and layout of a police station weigh in favor of a determination that the interview was "custodial"?

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PETITION FOR WRIT OF CERTIORARI

The State of Indiana respectfully petitions the Court for a writ of certiorari to review the judgment of the Supreme Court of Indiana.

OPINIONS BELOW

The Indiana Supreme Court entered judgment on June 3, 2019, and its opinion, App. 1a–17a, is reported at 123 N.E.3d 675 (Ind. 2019). The Indiana Court of Appeals entered its judgment on July 24, 2018, with an unpublished Memorandum Decision, App. 18a–34a, that is available at No. 36A01-1712-CR-2999, 2018 WL 3543561 (Ind. Ct. App. July 24, 2018). The Jackson County Circuit Court entered an unpublished order granting a motion to suppress on December 13, 2017, in Cause Number 36C01-1510-F4-000025, App. 36a–37a.

JURISDICTION

The Indiana Supreme Court entered judgment on June 3, 2019, App. 1a, and denied the State's petition for rehearing on August 23, 2019, App. 35a. The State requested an enlargement of time to file its petition for writ of certiorari until January 20, 2020, and the Court granted that request. Because January 20, 2020 is a federal holiday (Birthday of Martin Luther King, Jr.), by rule the State's petition is due January 21, 2020. Sup. Ct. R. 30.1. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

INTRODUCTION AND STATEMENT OF THE CASE

Under *Miranda v. Arizona,* 384 U.S. 436, 444–45 (1966), before interrogating a person "in custody," police must advise the person of the constitutional rights to remain silent and consult with an attorney (at state expense if necessary). "[P]olice officers are not required to administer *Miranda* warnings to everyone whom they question," and a *Miranda* warning is not required "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect." *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). Instead, "*Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" *Id.*

To establish "custody," a suspect first must always demonstrate "'restraint on freedom of movement' of the degree associated with a formal arrest." *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010) (quoting *New York v. Quarles*, 467 U.S. 649, 655 (1984)). But because "[n]ot all restraints on freedom of movement amount to custody for purposes of *Miranda*," in addition to making this "freedom-of-movement" showing the suspect must demonstrate that "the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes v. Fields*, 565 U.S. 499, 509 (2012).

This case arises from an interview two local detectives took of Ernesto Ruiz in the police station of Seymour, Indiana. Ruiz was not arrested: He voluntarily

chose to take the interview, drove himself to the station, was told he could leave at any time, was interviewed for less than an hour, and freely left the station once the interview concluded. Nevertheless, the Indiana Supreme Court held that Ruiz was in "custody" under *Miranda*. In support of this determination it cited two features of the police station, "the circuitous path" leading to the interview room and the need to use a key fob to pass through one of the doors on the way to the interview room—features the station shares with countless other local police stations around the country. In doing so, the Indiana Supreme Court created a state-federal judicial conflict, deepened a preexisting conflict among the lower courts, and departed from this Court's decisions.

1. According to the probable cause affidavit, on October 1, 2015, a nine-year-old friend of Ruiz's daughter spent the night at the Ruiz residence. App. 19a–20a. Ruiz's daughter slept in the living room and her friend slept in the daughter's bedroom. App. 20a. When Ruiz returned home from work, around 5:30 in the morning, he went into his daughter's bedroom and asked her friend for a hug; she obliged. *Id.* Later, unable to sleep, the friend went to the living room to see if Ruiz's daughter was awake, then walked into the kitchen. *Id.* Ruiz entered the kitchen and hugged the friend again. *Id.*

Ruiz then took the friend's hand and put it inside his shorts, placing her hand on his buttocks. *Id.* The friend tried pulling her hand into her shirt sleeve, but Ruiz grabbed her hand, placing it back on his buttocks and moving it in a circular motion while making a

sighing noise. *Id.* Ruiz then placed his hands on the friend's buttocks over her clothes and squeezed, saying "yeah." *Id.* Ruiz's daughter woke up, and Ruiz left the kitchen to go to bed. *Id.* The friend told his daughter what had happened, and his daughter asked her not to tell anyone. *Id.* Eventually, the friend told a teacher about the incident. *Id.*

On October 7 Sergeant Greg O'Brien, a Seymour Police Department detective, went to Ruiz's house, told Ruiz about the child molestation allegations, and explained that he needed to interview Ruiz at the police station. App. 20a–21a. A short time later, Ruiz drove himself to the police station and walked through an unlocked exterior door to meet O'Brien in the lobby. App. 21a.

As O'Brien led Ruiz to the interview room, their route took them through a secure door requiring a key fob for entry but not for exit, then upstairs and through another secure door—which was then propped open—and then into the interview room. App. 10a. O'Brien sat Ruiz near the room's door, which was closed while he questioned Ruiz. App. 21a.

O'Brien began the interview by asking "[D]o you understand that you don't have to talk to me? Do you understand that? You don't have to talk to me . . . And you understand that you can get up and walk out that door at any time." *Id.* Ruiz affirmed he understood. *Id.* O'Brien also confirmed that Ruiz spoke both Spanish and English and that Ruiz was "pretty much" fluent in English. *Id.* After about thirteen minutes—during which time Ruiz denied hugging his daughter's friend—a second detective entered the room, dressed

in plain clothes and without his firearm. App. 21a–22a. O'Brien continued questioning Ruiz, who told the detectives that the friend may have hugged him while they were in the kitchen. App. 22a. The second detective then began questioning Ruiz, and he falsely told Ruiz that they had already questioned the girl and that she had passed a lie detector test. *Id.* At that point, Ruiz emphasized that the hug took place in the kitchen, and that during the hug the friend's hand maybe slid down and touched his buttocks. *Id.* Ruiz eventually told the detectives that there had been another hug. App. 23a.

The entirety of the interrogation lasted less than an hour, and at its conclusion Ruiz left the station on his own. App. 24a. At no point during the interview did the detectives physically restrain Ruiz. *Id.*

2. Prosecutors ultimately charged Ruiz with Level 4 felony child molesting. App. 24a.

On December 3, 2017, two days before his scheduled jury trial, Ruiz filed a motion to suppress the statements he made at the Seymour police station. App. 24a. The trial court granted the motion on December 6, 2017—in the midst of trial—holding that Ruiz was subject to a custodial interrogation and that admission of his statements would therefore violate *Miranda*. *Id.* The trial court cited several factors weighing in favor of its custody determination, including that Ruiz was buzzed into a secure area, that the officers shut the door to the interview room, that two officers conducted the interview, and that Ruiz was not from America and possibly did not understand that the officer's explanation that he could "walk out

the door" meant that he was free to leave. App. 24a–26a.[1] As the jury had already been empaneled, the trial court declared a mistrial. App. 4a.

The State appealed the trial court's suppression order, and the Indiana Court of Appeals reversed, holding that Ruiz was not in custody. App. 33a–34a. The Court of Appeals concluded that a reasonable person would have felt free to leave because Ruiz voluntarily traveled to the police station, was seated near the door in the interrogation room, was never restrained, was informed by O'Brien (before the interrogation began) that that he did not have to talk and could get up and walk out the door at any time, was interviewed for less than one hour, and was allowed to leave the police station on his own. App. 32a–33a.

3. Ruiz then petitioned for transfer to the Indiana Supreme Court, which the Court granted, vacating the Court of Appeals' decision and affirming the trial court's suppression order. App. 5a, App. 16a. Applying the first ("freedom-of-movement") inquiry of the custody test, the Court recognized that evidence did "indeed point toward no custody." App. 10a. In particular, the Court noted that Ruiz drove himself to the police station, that O'Brien "told him, 'you don't have to talk to me' and 'you can get up and walk out that door

[1] The trial court also noted the possible relevance of Article I of the Indiana Constitution, but, as the Indiana Supreme Court later explained, Ruiz failed to advance any "state constitutional arguments separate from those based on the Federal Constitution" and therefore waived any right to suppression on state constitutional law grounds. App. 3a–4a.

at any time,'" that "Ruiz sat near the unlocked interview-room door and had not been arrested," that the interview "lasted less than an hour," and that "Ruiz left unhindered after it was over." App. 9a.

Notwithstanding this evidence, the Court held that other factors established that Ruiz was in custody. App. 10a. The Court pointed principally to the "circuitous path" O'Brien and Ruiz took to the interview room, which in the Court's view "drew a labyrinthine exit route with many obstructions to egress." App. 11a. The Court described the path as "from the lobby through a door that required a key fob to enter; into a secured area containing the police squad room; 'up the elevator and the stairs'; through a second keyed door that was propped open; and into a small interview room with no windows and a single door." App. 10a. It also noted that no one told Ruiz the door secured by a key fob could be opened from the inside to exit the building. App. 11a.

The Court identified a handful of additional factors supporting its custody determination: O'Brien went to Ruiz's home to inform Ruiz of the allegations and invite him to be interviewed; O'Brien did not tell Ruiz he could schedule the interview for another time or place; the door to the interview room was closed during the interview; another detective entered the room partway through the interview so that "the police outnumbered Ruiz in the room two-to-one"; the second detective took over "as the main, and more aggressive, interrogator," thereby "subverting" O'Brien's statement that Ruiz could "walk out the door at any time"; the detectives were positioned near

the door; and the detectives told Ruiz to "sit tight" several times throughout the interview. App. 10a, 11a–12a.

Finally, in addition to holding that Ruiz's freedom-of-movement was restrained, the Court held that Ruiz satisfied the second inquiry of the custody test, which asks "whether the circumstances exert the coercive pressures that drove *Miranda*." App. 13a. Here the Court emphasized that the interview took place at a police station, relying on a First Circuit case for the proposition that when a case "involves 'the paradigm example of interrogating a suspect at a police station,' the answer to this question is generally 'obvious, in the absence of unusual facts." App. 13a (quoting *United States v. Ellison*, 632 F.3d 727, 729 (1st Cir. 2010)). The Court also noted that the detectives had kept Ruiz "off balance" in an unfamiliar environment, with the additional detective (whom Ruiz had not yet met) taking over questioning, falsely telling Ruiz the victim had taken a lie-detector test, advising Ruiz that it would "look bad" if he were not forthcoming about the allegations, suggesting to Ruiz that they knew the accusations were true, and warning that if "Ruiz didn't talk right then about what he had done, they would make things worse for him in the future—because they would worry that he wasn't honest." App. 15a.

Accordingly, the Indiana Supreme Court affirmed the suppression of Ruiz's statements on the ground that Ruiz had been in custody during the interview. App. 16a. The trial court has stayed further proceedings pending resolution of this petition. App. 95a.

REASONS FOR GRANTING THE PETITION

The decision below nearly requires police to give *Miranda* rights every time a suspect is questioned at a police station, a rule this Court rejected long ago in *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). It also squarely conflicts with the Seventh Circuit's holdings that the ordinary security features and layout of a police station do not suggest that an interview is custodial, and it exacerbates a preexisting conflict among other lowers courts, including another federal-state conflict between the Sixth Circuit and the Tennessee Supreme Court.

Police conduct voluntary station-house interviews of suspects every day all across the country. This case provides the Court with an opportunity to provide law enforcement officials with much-needed guidance as to what circumstances make a voluntary station-house interview "custodial" and thereby trigger the *Miranda* requirement.

I. The Court Should Take This Case to Resolve Conflicts Among Federal Circuits and State Supreme Courts Over the Significance of Ordinary Police Station Layout and Security

The decision below creates a conflict between the Indiana Supreme Court and the Seventh Circuit over the significance of station-house security and layout for the purpose of determining whether a suspect is in custody—a conflict that mirrors a preexisting split between the Tennessee Supreme Court and the Sixth Circuit. What is more, the Sixth and Seventh Circuits (which hold that ordinary security and layout features do *not* weigh in favor of custody) disagree

with the Eleventh Circuit (which holds that such factors *do* point to custody). Fundamentally, the decision below (as well as the Eleventh Circuit's doctrine) fatally contradicts the Court's precedents. Accordingly, this case presents a nationally important issue that requires resolution from this Court.

A. The decision below creates a conflict between the Indiana Supreme Court and the Seventh Circuit

The Indiana Supreme Court's decision squarely holds that a police station's security features and layout should be included in the custody analysis under *Miranda v. Arizona*, 384 U.S. 436 (1966). When evaluating whether Ruiz's freedom of movement was restrained to the degree associated with a formal arrest, the Indiana Supreme Court identified three factors that weighed in favor of finding that he was effectively in custody, despite being told that he did not have to talk to the detective and that he could walk out the door at any time: (1) the officers told Ruiz more than once to "sit tight"; (2) when the second officer "entered the interview room; shut the door; and took over as the main, and more aggressive interrogator," this "dramatically changed the interrogation atmosphere"; and (3) the "circuitous path by which Detective O'Brien took Ruiz into the interrogation room drew a labyrinthine exit route with many obstructions to egress," such as entering through a door that required a key fob and ascending a floor "up the elevator and the stairs." App. 10a–11a.

The Seventh Circuit, however, has expressly *rejected* that approach. Most recently, it refused to

treat the location of an interrogation room on the tenth floor of an office building—with access to both the office and the interview room limited by a card reader and keypad—as a signal of custody for *Miranda* purposes. *United States v. Patterson*, 826 F.3d 450, 457 (7th Cir. 2016). There, FBI agents had driven the defendant to the office building, walked him inside, "took the elevator to the tenth floor and walked to the FBI office, which is a private space," and conducted the two-hour interrogation in one of the office's conference rooms, which also was accessed by a card-reader. *Id.* at 455–56. Yet the Seventh Circuit, noting that it had previously "rejected similar arguments," refused to count these circumstances in the defendant's favor, concluding that "security measures that are universally applied to the public and employees" should *not* factor into the custody analysis. *Id.* at 457 (citing *United States v. Ambrose*, 668 F.3d 943, 956–57 (7th Cir. 2012) (holding that "uniformly applied" security restrictions, such as being escorted through the building to a conference room on a higher floor, do not suggest that an interview is custodial)). Accordingly, even though the FBI agents drove the suspect to the FBI office and never told him that he was not under arrest or free to leave, the Seventh Circuit held that the interrogation was not custodial. *Id.* at 458.

The Seventh Circuit has also rejected the argument that the *location* of the interview room within a police station has any impact on the custody analysis. In *United States v. Budd*, 549 F.3d 1140, 1146 (7th Cir. 2008), it held that an interview was not custodial where the interview room was on the second

floor and down a long hallway, the suspect had to push a buzzer to be allowed access to the lobby, the elevator required a security card, and the suspect could not "move throughout the building without one of the officers with him." *Id.* It held that these circumstances did not affect the custody analysis because they were not "extraordinary," "especially in light of the fact that Budd agreed to meet at the police station." *Id.*

The circumstances here are even less "extraordinary" than those at issue in *Patterson*, *Ambrose*, and *Budd*. The purportedly "labyrinthine" route here required the Ruiz to ascend a single story and go through two secured doors—one of which was propped open, and both of which were unlocked for exit. App. 10a. If Ruiz had faced criminal charges in federal court, Seventh Circuit precedents undoubtedly would have permitted admission of his station-house confession. The Court is typically unwilling to tolerate such directly contradictory holdings by separate sovereigns within a regional circuit. It should not do so here.

B. The decision below exacerbates a pre-existing lower-court conflict

The Indiana Supreme Court and the Seventh Circuit are not the only courts to reach contradictory conclusions regarding the relevance to the custody analysis of ordinary police-station layout and security features. The Sixth Circuit and the Tennessee Supreme Court are similarly conflicted, and the Eleventh Circuit diverges from the Sixth and Seventh

Circuits. Both lower courts and law-enforcement officers need the Court to resolve the issue.

1. In 2017, the Sixth Circuit joined the Seventh Circuit in holding that the mere use of a restricted area for questioning does not automatically render the suspect in "custody" if the suspect is told she is free to leave. *U.S. v. Elliott*, 876 F.3d 855, 867 (6th Cir. 2017). In that case, police questioned the suspect in her workplace after securing it following a search, and the Sixth Circuit explained that "analogously restricted areas" in a police station do not create "custody" if an individual questioned there is free to leave. *Id.* It observed that, otherwise, "suspects questioned in such a station would always be found to be in custody." *Id.*

The Sixth Circuit's decision in *Elliott*, however, directly conflicts with the Tennessee Supreme Court's decision in *State v. Dailey*, 273 S.W.3d 94, 103 (Tenn. 2009), which holds that interrogating a suspect in a secured portion of a police station *does* suggest that the interrogation is custodial. There the Tennessee Supreme Court concluded that, in part because of the location of the interrogation room, "a reasonable person in the Defendant's position would have considered himself or herself deprived of freedom of movement to a degree associated with a formal arrest." *Id.* at 103–104 (internal quotations omitted).

2. Additional decisions on this important issue only add to the confusion. In contrast with the Sixth and Seventh Circuits, which discount the significance of station-house layout and security, the Eleventh Circuit granted a certificate of appealability on the

ground that taking a suspect into a secure, non-public area of a police station tends to make the questioning more custodial. *Burch v. Sec'y, Fla. Dep't of Corr.*, No. 12-14828-E, 2012 U.S. App. LEXIS 27013, at *6 (11th Cir. Dec. 21, 2012) (per curiam). In its later decision on the merits, the Eleventh Circuit explained that being "interviewed in a secured room" and escorted for smoke breaks were "objective factors" supporting a conclusion that the suspect was in custody. *Burch v. Sec'y, Fla. Dep't of Corr.*, 535 Fed. App'x 789, 793–94 (11th Cir. 2013).

In contrast with the Eleventh Circuit, the Indiana Supreme Court and the Tennessee Supreme Court—but consistent with the Sixth and Seventh Circuits—the Colorado Supreme Court has held that being interviewed in a secure building does *not* weigh in favor of a determination that the interview was custodial. *People v. Matheny*, 46 P.3d 453, 467 (Colo. 2002). In *Matheny* the Colorado Supreme Court held that a station-house interview was not custodial and explained that "[t]he fact that the room where the interview took place happened to be on the third or fourth floor of a secure police station does not alter this conclusion." *Id.* at 468.

State and federal courts are thus in protracted disagreement regarding a crucial doctrine bearing on police investigative practices: how the layout and security measures of a police station affect the *Miranda* custody analysis. A decision from this Court addressing this issue would provide a uniform answer to this

question and would provide greater clarity for line officers tasked with determining when *Miranda* warnings are necessary.

C. The decision below conflicts with the Court's precedents on this issue

The factors the Indiana Supreme Court identified—that the police station had ordinary, key-fob security measures and located the interview room away from the front lobby—exist in virtually *every* police station. Accordingly, the decision below (and similar decisions issued by other courts) means as a practical matter that a police interview is custodial *whenever* it occurs in a police station. Indeed, the Sixth Circuit has acknowledged that to equate the existence of a restricted area with "custody" would mean that "suspects questioned in such a station would always be found to be in custody." *Elliott*, 876 F.3d at 867.

Such an outcome, however, directly contradicts *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977), which squarely held that an interrogation does not become custodial "simply because the questioning takes place in the station house." *See also California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Mathiason*); *Howes v. Fields*, 565 U.S. 499, 507–08 (2012) (same). After all, in order for an interrogation to be custodial it must involve a restriction on the suspect's freedom of movement "of the degree associated with a formal arrest." *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010) (quoting *New York v. Quarles*, 467 U.S. 649, 655 (1984). And merely being *in* a police station is simply not equivalent to being arrested.

In counting ordinary security features and layout details in favor of a custody determination, the Indiana Supreme Court—as well as the Tennessee Supreme Court and the Eleventh Circuit—contradicted a rule this Court has reaffirmed for well over three decades. The Court should correct this growing misapplication of the Court's *Miranda* jurisprudence.

II. This Case Presents a Frequently Recurring Issue of National importance

Law-enforcement officers around the country regularly interview individuals in a variety of situations, including in police stations. And, lest crucial information turn out to be inadmissible, they need to know when such interviews require warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966).

For this reason, the Court has recognized the importance of providing guidance to police in carrying out *Miranda* requirements. It has explained that courts should use an *objective* test to determine whether an accused has invoked the right to counsel in order "[t]o avoid difficulties of proof and to provide guidance to officers conducting interrogations." *Davis v. United States*, 512 U.S. 452, 458–459 (1994). It has applied an objective test to the custody inquiry as well, which was similarly a doctrinal decision "designed to give clear guidance to the police." *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004). Even with an objective custody test, police still "must make in-the-moment judgments as to when to administer *Miranda* warnings." *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011). The purpose of the objective test is to avoid "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.*

A Supreme Court decision here would have widespread impact, given the frequency with which police conduct station-house interviews. In the past few years alone, state courts have published many opinions addressing whether a station-house interview was custodial. *See*, *e.g.*, *People v. Saldana*, 228 Cal. Rptr. 3d 1, 4 (Cal. Ct. App. 2018) (station-house interview held to be custodial); *People v. Espinoza*, No. 15CA1920, 2017 WL 4171888, at *3–*4 (Colo. App. September 21, 2017) (station-house interview was noncustodial); *Cushman v. State*, 228 So.3d 607, 618 (Fla. Dist. Ct. App. 2017) (station-house interview began as noncustodial and turned custodial after confession); *Rhynes v. State*, 831 S.E.2d 831, 834 (Ga. 2019) (station-house interview was noncustodial until officers threatened implicitly to arrest interviewee); *State v. O.E.W.*, 133 N.E.3d 144, 159 (Ind. Ct. App. 2019) (station-house interrogation held to be custodial); *Simms v. Commonwealth*, 529 S.W.3d 301, 306 (Ky. Ct. App. 2017) (station-house interview deemed noncustodial); *People v. Barritt*, 899 N.W.2d 437, 439 (Mich. Ct. App. 2017) (station-house interrogation deemed custodial); *State v. Stricklin*, 558 S.W.3d 54, 64 (Mo. Ct. App. 2018) (station-house interview deemed custodial); *State v. Montoya*, 933 N.W.2d 558, 574 (Neb. 2019) (station-house interview not custodial); *State v. Soto*, 93 N.E.3d 204, 212 (Ohio Ct. App. 2017) (remanding a trial court's grant of a motion to suppress a station-house confession).

Federal courts also confront the issue with some frequency when reviewing state prisoner habeas petitions. *See, e.g., Bankhead v. Davey*, No. 2:15–cv–0642, 2018 WL 1875629, at *3 (E.D. Cal. April 19, 2018) (concluding that a station-house interview was custodial, even though the interview occurred in a secured area of the station, because the suspect voluntarily came to the station, interviewed for about an hour, was told he was not under arrest, and was free to leave); *Washam v. Director, TDCJ-CID*, No 6:16-CV-01081, 2019 WL 1762918, at *2 (E.D. Tex. April 21, 2018) (holding that suspect was not in custody when he voluntarily traveled to a police station and met with officers who used strategic deception techniques to produce a voluntary statement); *Bunch v. Billups*, No. 5:14-cv-01834, 2017 WL 4020423, at *10 (N.D. Ala. July 14, 2017) (holding that station-house interview was noncustodial because prisoner traveled to police station voluntarily, interviewed less than an hour, was never told that he was not free to leave, and was not physically restrained); *Elliot v. Sec'y, Dep't of Corr.*, No. 8:15–cv–7–T–27AEP, 2017 WL 6559127, at *3 (M.D. Fla. October 23, 2017) (holding that suspect was not in custody where he voluntarily traveled to the police station, was buzzed into a lobby, was told that he could leave anytime and that the secured door was unlocked from the inside, and was not physically restrained).

And federal courts, of course, also confront such issues amidst federal criminal prosecutions. *See*, *e.g.*, *U.S. v. Ludwikowski*, 944 F.3d 123, 132 (3rd Cir. 2019) (holding suspect not in custody when questioned in conference room at police station for

about an hour after voluntarily coming to the station); *United States v. Ng*, 754 Fed. App'x. 648, 649 (9th Cir. 2019) (affirming denial of suppression order because station-house interview was noncustodial); *United States v. Wesley*, No. CR-16-01836-001, 2018 WL 507881, at *5 (D. Ariz. January 22, 2018) (granting motion to suppress on the ground that station-house interview was custodial); *United States v. Glenn*, No. 18-cr-20061, 2019 WL 2287730, at *3 (C.D. Ill. May 29, 2019) (denying a motion to suppress because station-house interview was noncustodial); *United States v. Williams*, No. 7:16-15-KKC-EBA-1, 2017 WL 3129372, at *5 (E.D. Ky. July 24, 2017) (holding statements made at state police post non-custodial).

Particularly given the frequency of station-house interviews, the decision below will in many cases add to the already-steep burdens police face when determining when to give *Miranda* warnings. Police should not be required to catalogue how many stairs or elevators a suspect must take, how many hallways a suspect must traverse, or how many key fobs guards must scan, before having a reliable understanding of whether an interrogation will be deemed "custodial." Police need to know whether such commonplace station-house security measures and layouts matter. And in light of the contradictory decisions of the Seventh Circuit and the Indiana Supreme Court, and similarly of the Sixth Circuit and Tennessee Supreme Court, in Indiana and Tennessee the answer depends on whether the suspect is charged with a federal or a state crime. Such disparate results cry out for unity that only this Court can provide. It should do so.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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Dated: January 21, 2020