No. 19-924

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

REPLY BRIEF OF PETITIONER

Office of the Indiana Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

*Counsel of Record

THOMAS M. FISHER
Solicitor General*
KIAN HUDSON
Deputy Solicitor General
JULIA C. PAYNE
COURTNEY L. ABSHIRE
Deputy Attorneys General

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CASES [CONT'D]

REPLY BRIEF OF PETITIONER

After his daughter's nine-year-old friend told a teacher Ernesto Ruiz had molested her, Ruiz voluntarily drove to the Seymour, Indiana police station to discuss the allegations. Even after Ruiz affirmed his understanding he did not have to talk to the detective and confirmed his "pretty much" fluent English, he continued discussing the molestation allegation with the police. Yet the Indiana Supreme Court determined that Ruiz's interview was custodial and held that his confession must be suppressed. It did so because it concluded that the "labyrinthine route" to the interview room—which featured a door that required a key fob to enter (but not exit) and a set of elevators and stairs—weighed heavily in favor of its determination that Ruiz was in custody.

That decision contradicts precedents from the Seventh Circuit and other lower courts that refuse to count such ordinary security and layout features against the government in the *Miranda* custody analysis. Most recently, in 2016 the Seventh Circuit emphasized that such features do *not* weigh in favor of a custody determination. *United States v. Patterson*, 826 F.3d 450, 457 (7th Cir. 2016). Describing an interview room strikingly similar to the one at issue here, the Seventh Circuit explained that the room's characteristics—that the room (1) "was a private space," (2) "remained unlocked from the inside and could be exited via common door handles," (3) was located in a building where access "was limited by a card-reader and a keypad," and (4) was itself access-limited "by another card-reader"—all had "*minimal*

weight in considering the totality of circumstances" in determining whether the interview was custodial. *Id.* (emphasis added; citations omitted).

Ruiz dismisses the relevance of *Patterson* and the other lower-court cases principally on the ground that all of the decisions the State cites in the petition apply the well-established totality-of-the-circumstances test to determine whether the interview at issue was custodial. Br. in Opp. 11. But this argument implies the Court should never take a case regarding *how to apply* this test—something the Court often does. There is plainly a conflict between the Seventh Circuit and the Indiana Supreme Court—as well as between other federal courts of appeals and state high courts—over whether a police station's ordinary security features and architectural layout weigh in favor of a determination that an interviewee was in custody.

The Court should grant certiorari to resolve this lower-court split. Courts, litigants, and law enforcement all need to know whether questioning a suspect in an ordinary police-station interview room will automatically provide a basis for deeming the interview custodial. Police officers conduct countless such voluntary interviews every day across the United States. The Court should decide whether they need to give *Miranda* warnings when they do so.

ARGUMENT

I. The Decision Below Exacerbates Lower-Court Disagreement Over a Custody-Determination Issue of the Sort the Court Often Reviews

The Indiana Supreme Court left no doubt that it assigned substantial weight to the police station's security features and the "circuitous path" Ruiz took to the interview room to determine that Ruiz was in custody. Indeed, these circumstances together constituted one of the "three reasons" it identified as supporting its conclusion that Ruiz was in custody under *Miranda*. App. 11a. The Indiana Supreme Court's decision creates a state-federal judicial conflict for the State of Indiana and exacerbates an existing lower-court split nationally. The Court should, as it has done many times when confronted with lower-court conflicts over issues related to implementing the "totality of the circumstances" test for determining custody, grant the petition and resolve this confusion.

A. The decision below adds to an existing lower-court split over whether ordinary police-station security features weigh in favor of deeming an interview custodial

1. The Seventh Circuit rejected the relevance of ordinary station-house security features in *Patterson*. *See United States v. Patterson*, 826 F.3d 450, 457 (7th Cir. 2016). Observing that "access to the FBI office was limited by a card-reader and a keypad and access to the conference room was limited by another card-reader," the Seventh Circuit determined that these

security features had "*minimal weight* in considering the totality of the circumstances." *Id.* (emphasis added). Underscoring its decision, the court noted that it had previously "rejected similar arguments" multiple times, *id.,* including in *United States v. Ambrose*, 668 F.3d 943, 956–57 (7th Cir. 2012), and *United States v. Budd*, 549 F.3d 1140, 1146 (7th Cir. 2008).

Ruiz argues that *Patterson* and *Ambrose* are distinguishable because in those cases the interrogations took place at FBI offices rather than a police station. But that is hardly a material distinction. *Patterson* and *Ambrose* expressly compared the FBI offices at issue to the *police-station* interview the Seventh Circuit had already deemed *non*-custodial in *Budd. Patterson*, 826 F.3d at 457; *Ambrose*, 668 F.3d at 956–57. And in *Budd* the Seventh Circuit held that the police station's security features and layout—including buzzed entrances, security cards, second floors, and long hallways—did *not* constitute "extraordinary circumstances" favoring a determination of custody, particularly where (as here) the interviewee "agreed to meet at the police station." *Budd*, 549 F.3d at 1146. Regardless, the FBI conference room in *Patterson* shared nearly identical security features to the interview room used here—for both, the door was secured on the outside (by card reader and key fob, respectively) and unlocked from the inside, such that the interviewee could exit freely.

Ruiz posits that perhaps the Indiana Supreme Court saw something not "ordinary" about the route Ruiz took to get to the interview room. Br. in Opp. 19.

But the descriptions of interview rooms in *Patterson*, *Budd*, *Ambrose*, and many other cases confirm the obvious—that the Seymour police station, insofar as it employs secure entrances, multiple floors, conference rooms and police officers, is completely ordinary. If such features do not weigh in favor of custody in the Seventh Circuit, they should not in Indiana state courts either.

2. Nor is the Seventh Circuit the only court to refuse to weigh the ordinary security features and architectural layout surrounding an interview room in favor of a custody determination. The Colorado Supreme Court took precisely this view in *People v. Matheny*: It declined to count police officers' decision to conduct an interview in a secure police station against the government, and expressly noted that "[t]he fact that the room where the interview took place happened to be on the third or fourth floor" does not "alter [that] conclusion." 46 P.3d 453, 468 (Colo. 2002). What is more, the *Matheny* court cited Second Circuit precedent to support this approach: It pointed to *United States v. Kirsteins*, 906 F.2d 919 (2nd Cir. 1990), explaining that there the Second Circuit "*disregard[ed]* the fact that [the] interview took place in a secure federal building because there was nothing to lead a reasonable person to believe that [the building's security measures] constituted a restraint on leaving." *Matheny*, 46 P.3d at 467 (quoting *Kirsteins*, 906 F.2d at 924) (emphasis added; final alteration in original).

In addition, the Sixth Circuit has said that conducting a voluntary interview amidst "the mere existence of a restricted area" analogous to a police station weighs "strongly in the *government's* favor"—that is, *against* a custody determination. *United States v. Elliott*, 876 F.3d 855, 867 (6th Cir. 2017) (emphasis added). This conclusion too is squarely at odds with the Indiana Supreme Court's decision to weigh such circumstances in *favor* of a custody determination.

3. The Indiana Supreme Court, to be sure, is joined by both the Tennessee Supreme Court and the Eleventh Circuit in weighing ordinary police station security features in favor of custody. *See State v. Dailey*, 273 S.W.3d 94, 103 (Tenn. 2009) (weighing occurrence of an interview in a "secured portion of the building" in favor of custody); *Burch v. Sec'y, Fla. Dep't of Corr.*, 535 F. App'x 789, 793 (11th Cir. 2013) (weighing against the government a police interview conducted in a secured room of a Sheriff's office).

But these decisions only reinforce the need for Supreme Court review, as they show that the split between the Indiana Supreme Court and the Seventh Circuit is not merely a fluke with merely local repercussions—though that alone would be a serious problem. Rather, lower courts across the country simply cannot agree whether a police station's ordinary security features and architectural layout should weigh in favor of a custody determination. This disagreement presents a significant problem for police officers, who must make in-the-moment judgments about whether the law requires them to afford *Miranda* warnings,

which of course in many cases will likely put the kibosh on what would have been a constructive—and entirely voluntary—investigative interview.

B. The Court regularly addresses conflict-generating issues regarding application of the totality-of-circumstances test

At bottom, Ruiz's argument is that there can be no circuit split worth the Court's attention because each of these station-house-layout decisions used the longstanding totality-of-the-circumstances test. Under this logic, however, *no* question concerning whether an interrogation was custodial would ever qualify for the Court's review, since such questions *always* require a totality of the circumstances analysis—and have for over forty years. *See Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (first using the totality-of-the-circumstances analysis to determine whether an interrogation of a suspect who had not been formally arrested was custodial for the purposes of the Miranda rule).

Yet the Court has, of course, often granted petitions to address how particular circumstances should affect whether an interview is deemed custodial. In *Yarborough v. Alvarado*, 541 U.S. 652 (2004), for example, the Court granted the petition to address whether, in applying the totality-of-the-circumstances test, "a court must consider the age and experience of a person if he or she is a juvenile." Pet. at i, *Yarborough v. Alvarado*, 541 U.S. 652 (2004), No. 02-1684, 2003 WL 22428064, at *i; *see also J.D.B. v. North Carolina*, 564 U.S. 261, 277 (2011) (determining that if a suspect's age is known to the interviewing

officer, the suspect's age may factor into the totality-of-the-circumstances analysis, even if it is not ultimately dispositive). Similarly, in *Stansbury v. California*, 511 U.S. 318, 324 (1994), the Court addressed whether a police officer's undisclosed suspicion of the interviewee should affect whether the interview is deemed custodial. In *Berkemer v. McCarty*, 468 U.S. 420, 427 (1984), it granted certiorari to "resolve confusion in the federal and courts" over whether motorists are in custody for *Miranda* purposes during a traffic stop. And in *California v. Beheler* the Court explained that the fact that "the police knew more about [the interviewee] before his interview than they did about *Mathiason* before his is *irrelevant*," as is "the length of time that elapsed between the commission of the crime and the police interview." 463 U.S. 1121, 1125 (1983) (emphasis added).

In each of these cases, both lower courts and this Court employed the *Mathiason* totality-of-circumstances test. *See Yarborough*, 541 U.S. at 665; *J.D.B.*, 564 U.S. at 268, 275; *Stansbury*, 511 U.S. at 321–22, 326–27; *Berkemer*, 468 U.S. at 425, 442; *Beheler*, 463 U.S. at 1125. Notwithstanding this superficial agreement, however, in those cases the Court recognized, as it should here, that some "circumstances" of police interaction are sufficiently common and repeated that a uniform, nationally applicable understanding of their significance for *Miranda* purposes is justified. "Judges alone make 'in custody' assessments for *Miranda* purposes, and they do so with a view to identifying recurrent patterns, and advancing uniform outcomes." *Thompson v. Keohane*, 516 U.S. 99, 113 n.13

(1995). Station-house interviews, and the ordinary police station security features that accompany them, squarely fall into the category of recurring circumstances that call for a uniform national rule. The Court should grant the petition and provide such a rule here.

II. This Case Is an Excellent Vehicle to Address This Recurring Question of National Importance

This case affords an excellent vehicle for considering the question presented. Because the State conceded below that it could not move forward to trial without Ruiz's confession, the sole issue remaining in this case—and the sole issue faced by the trial court and appellate courts below—was whether the officers' interview of Ruiz was custodial. If the Court were to grant the petition, no procedural issues would interfere with its consideration of the question presented, and its answer to the question would effectively decide the outcome of the case.

1. Ruiz resists this conclusion, arguing that "the question presented did not control the outcome of the Indiana Supreme Court's analysis" because "the court was explicit that its ultimate finding of custody turned on the *combination*" of several factors in addition to the police station's layout and security features. Br. in Opp. 16–17 (emphasis in original). But this reasoning runs into the same problem plaguing Ruiz's challenge to the lower-court split: Because custody determinations always rest on the totality of circumstances, rejecting review wherever the mere possibility of confounding variables might exist would

mean that *no Miranda* custody case would ever qualify for the Court's review. Yet, as noted above, the Court has frequently granted petitions to address how the totality-of-the-circumstances test applies to particular, recurring circumstances.

Moreover, it is highly likely that the Indiana Supreme Court would not have considered the interview custodial if it had not weighed the police station's security features and layout in favor of custody. The other two reasons the Court gave for characterizing the interview as custodial were (1) that "the officers told Ruiz to 'sit tight' multiple times" and (2) that shortly after the interview began a second officer "entered the interview room; shut the door; and took over as the main, and more aggressive, interrogator." App. 11a. These factors cannot justify a custodial determination when compared with the many factors that weigh *against* custody here: Ruiz (1) freely chose to take the interview, (2) drove himself to the station, (3) was explicitly told by police he did not have to talk and could leave at any time, (4) was interviewed for less than an hour, and (5) left the station on his own after the interview ended. App. 9a, 20a–24a. The Indiana Supreme Court itself acknowledged that these factors do "indeed point toward no custody." App. 10a.

And beyond this particular case, the lower-court disagreement creates uncertainty for police who must make in-the-moment judgments when determining whether to administer a *Miranda* warning to a suspect they are questioning but who has not been formally arrested. *See*, *e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 271 (2011) (noting that the custody test is

"designed to give clear guidance to the police," who "must make in-the-moment judgments as to when to administer *Miranda* warnings" (internal quotation marks and citations omitted)). The question at issue in this case affects decisions law enforcement officers make on a daily basis while investigating and preventing crime. As the State explained in its petition, whether a station-house interview was custodial and required *Miranda* warnings is a question frequently faced by state and federal courts. *See* Pet.18–20. And because nearly every modern police station has some security features and some elevators or stairs, station-house interviews will invariably give rise to the argument that the station's ordinary security features and layout should weigh in favor of characterizing the interview as custodial.

Accordingly, this case presents a question of nationwide importance—a proposition Ruiz's brief in opposition does not even attempt to contest. This question is worthy of the Court's review. As the Court observed in *Thompson v. Keohane*, even if courts "cannot supply 'a definite rule'" for determining whether interviews are custodial for *Miranda* purposes, "they nonetheless can reduce the area of uncertainty." 516 U.S. 99, 113 n.13 (1995). This case provides the Court with an opportunity to do just that. The Court should grant the petition, resolve the lower-court split, and reduce courts', litigants', police officers', and everyday citizens' uncertainty regarding whether particular station-house interviews will later be deemed custodial.

CONCLUSION

The petition should be granted.

Respectfully submitted,

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

**Counsel of Record*

THOMAS M. FISHER
Solicitor General*
KIAN HUDSON
Deputy Solicitor
General
JULIA C. PAYNE
COURTNEY L. ABSHIRE
Deputy Attorneys
General

Counsel for Petitioner

Dated: June 1, 2020