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NO. 21-\_\_\_\_\_

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IN THE UNITED STATES SUPREME COURT

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SUSAN KAYTLIN SCOTT,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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## QUESTIONS PRESENTED FOR REVIEW

1. Do the Circuit Courts' different tests used to determine custody status for purposes of *Miranda* lead to inconsistent results?
2. Did the District Court and the Ninth Circuit Court of Appeals err in concluding Ms. Scott was not "in custody" for purposes of *Miranda* when law enforcement questioned her alone in a small windowless room at the police station while law enforcement detained and were investigating her minor son for shooting another minor?

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1. Memorandum and Judgment, United States Court of Appeals for the Ninth Circuit, United States v. Susan Kaytlin Scott, Court of Appeals No. 20-30132, affirming the district court, April 20, 2021.
2. Judgment, United States District Court for the District of Montana at Great Falls, United States of America v. Susan Kaytlin Scott, District Court No. 4:19-cr-00069-BMM-1, June 4, 2020.
3. Oral Denial of Motion to Suppress, United States District Court for the District of Montana at Great Falls, United States of America v. Susan Kaytlin Scott, District Court No. 4:19-cr-00069-BMM-1, December 18, 2019.



## **JURISDICTIONAL STATEMENT**

Ms. Scott was convicted after a jury trial of Count I, 18 U.S.C. § 922(a)(6), for False Statements During A Firearms Transaction and Count II, 18 U.S.C. § 922(x)(1)(A) for Transfer of a Handgun to a Juvenile on January 28, 2020. She was sentenced pursuant to the Sentencing Reform Act of 1984 to six months imprisonment with the Bureau of Prisons on each count, concurrent, with no term of supervision to follow. She appealed, challenging the denial of her pretrial Motion to Suppress, along with her trial conviction. The United States Court of Appeals for the Ninth Circuit entered its Memorandum and Judgment affirming the Judgment of the District Court on April 20, 2021. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1). Rule 13(1) of the Supreme Court allows for ninety days within which to file a Petition for a Writ of Certiorari after entry of the Judgment of the Court of Appeals. Accordingly, this Petition is timely filed.

Pursuant to Rule 29.4(a), appropriate service is made to the Solicitor General of the United States and to Assistant United States Attorney Kalah A. Paisley, who appeared in the United States Court of Appeals for the Ninth Circuit on behalf of the United States Attorneys Office, a federal office which is authorized by law to appear before this Court on its own behalf.

Petitioner Scott respectfully prays that a Writ of Certiorari issues to review the Memorandum and Judgment of the United States Court of Appeals for the Ninth



Circuit. In that Memorandum, the Ninth Circuit affirmed the District Court's determination that Ms. Scott was not "in custody" for purposes of *Miranda*, therefore finding the District Court correctly denied her pretrial Motion to Suppress. Ms. Scott challenges that finding.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### **Self-Incrimination Clause, Fifth Amendment, United States Constitution:**

“No person . . . shall be compelled in a criminal case to be a witness against himself . . .”

### **18 U.S.C. § 922(a)(6):**

It shall be unlawful –

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

### **18 U.S.C. § 922(x)(1)(A):**

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun.

## **STATEMENT OF THE CASE AND FACTS**

On December 23, 2018, Toole County Sheriff's deputies responded to a shooting call in Shelby, Montana. Anthony Ray, a minor at the time, and the adopted son of Ms. Scott, volunteered to the deputies that he shot his friend in the face, causing life-threatening injuries. Deputy Jeff Robins was amongst the deputies who responded to the scene. Ms. Scott arrived at the scene and made inquiries about her minor son. Robins informed Ms. Scott that her minor son had been taken to the Sheriff's office and she needed to go there to receive more information about her minor son's detention. Robins helped process the evidence at the scene of the shooting and recovered a Taurus 9mm handgun. Upon arrival back at the sheriff's office, Robins spoke with Undersheriff Ryan Larson, who requested that Robins have a conversation with Scott regarding the origins of the Taurus 9mm handgun.

Ms. Scott was present in a conference room near the lobby of the sheriff's office, so Robins went out to ask her if he could speak with her about the handgun. Robins took Ms. Scott out of the conference room into a small, windowless room which is not accessible to the public. While walking from the conference room to the interview room, Robins told Ms. Scott that he needed to ask her where the gun came from and asked her to accompany him into the other room. She followed Robins into the interview room, where they sat across from one another at a small table. Robins pulled the door closed, but it was not latched. Robins was armed with

his service weapon in its holster. At no point did Robins advise Ms. Scott that she had the right not to speak with him, that she had the right to consult with an attorney, or that she was free to go. At one point toward the beginning of the interview, Ms. Scott stated, "I've never been in this situation."

Ms. Scott's interview with Robins lasted approximately twenty minutes, and he did not advise her of *Miranda* warnings at any time. Ms. Scott was not deprived of food or sleep, no form of physical punishment was employed, Ms. Scott did not appear to suffer from any mental illness or defect, and Robins did not utilize coercive tactics in his interview with her. Robins and Ms. Scott were neighbors, and Ms. Scott had prior conversations with Robins about her minor son less than half a dozen times over the course of three or four years.

Under Montana law, Robins was required to record an interview when a subject is in custody, and Robins recorded his interview with Ms. Scott. Robins' office also utilizes a form for voluntary statements, which specifically says "Not under arrest." Robins did not use this form during his interview with Ms. Scott.

Toward the end of his interview with Ms. Scott, Robins asked, "Is it reasonable to believe that you bought the gun for [Ray]?" to which Scott answered, "Yes." Robins also asked Ms. Scott, "But you used his debit card, so you really got it for him, didn't you?" At no point did Robins advise Ms. Scott that she did not have to answer his questions, that she could have a lawyer, or that she could leave.



At the end of the interview, Robins left the interview room to go find the Chaplain, and Ms. Scott remained in the room. Ms. Scott ultimately left the interview room and the sheriff's office. Law enforcement was required under Federal and Montana law to get Ms. Scott's permission before they could interview Ray, as he was under the age of eighteen at the time of this incident.

Sometime thereafter, Robins referred Ms. Scott's case to Task Force Agent Lynch, and he received a copy of Robins' case file. On September 5, 2019, Ms. Scott was charged in a two-count Indictment, alleging violations of 18 U.S.C. § 922(a)(6) and 18 U.S.C. § 922(x)(1)(A). She plead not guilty and the District Court set appropriate pretrial deadlines, including a pretrial motions deadline. Ms. Scott timely filed a Motion to Suppress, arguing that her statement made to Robins during his investigation into the shooting which involved her minor son should have been suppressed because Robins failed to advise her of her rights pursuant to *Miranda*. The District Court held a hearing on Ms. Scott's Motion to Suppress on December 18, 2019. At that hearing, the Court heard testimony from witnesses, including Ms. Scott herself, as well as argument from the attorneys. At the conclusion of the hearing, the District Court denied Ms. Scott's Motion to Suppress, finding that she was not "in custody" when she gave her statement to law enforcement; therefore, she was not entitled to warnings under *Miranda*. APP012 – APP016.

Ms. Scott proceeded to trial and was convicted by a jury on January 29, 2021. On June 4, 2020, Ms. Scott was sentenced to six months in the custody of the Bureau of Prisons on each count, concurrent, with no term of supervision to follow. APP008. No fine was imposed. *Id.* A timely Notice of Appeal was filed on June 17, 2020. Ms. Scott filed her Opening Brief with the Ninth Circuit Court of Appeals on September 16, 2020. On direct appeal, Ms. Scott argued that the District Court erred in failing to suppress her statements made to law enforcement during the course of their investigation. The Government filed an Answering Brief on November 9, 2020, and Ms. Scott filed a Reply Brief on December 29, 2020. On April 20, 2021, the Ninth Circuit issued its Memorandum and Judgment, which affirmed the District Court's ruling on Ms. Scott's Motion to Suppress and her trial conviction. APP001 – APP006. The Ninth Circuit also found that Ms. Scott was not "in custody" for purposes of *Miranda*. *Id.*



## REASONS FOR GRANTING OF THE WRIT

### I. THE CIRCUIT COURTS' DIFFERENT TESTS TO DETERMINE "CUSTODY" STATUS FOR PURPOSES OF *MIRANDA* LEAD TO INCONSISTENT RESULTS.

In *Miranda v. Arizona* this Court held that:

[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

*Miranda v. Arizona*, 384 U.S. 436, 444 (1966). A person's Fifth Amendment rights attach when he or she is subjected to custodial interrogation. *Id.*, at 384 U.S. 444-445. Since this Court's holding in *Miranda*, the Circuits have devised different tests to determine whether a person is "in custody" for purposes of *Miranda*.

For example, the Second Circuit has articulated the test to determine whether one is "in custody" for purposes of *Miranda* as follows:

The test used in determining whether a defendant was in custody is an objective one that (a) asks whether a reasonable person would have understood herself to be subjected to restraints comparable to those associated with a formal arrest, and (b) focuses upon the presence or absence of affirmative indications that the defendant was not free to leave. An accused is in custody when, even in the absence of an actual arrest, law enforcement officials act or speak in a manner that conveys the message that they would not permit the accused to leave.

*Tankleff v. Senkowski*, 135 F.3d 235, 243-244 (2nd Cir. 1998) (quoting *United States v. Kirsch*, 54 F.3d 1062, 1067 (2nd Cir.) *cert. denied*, 516 U.S. 927, 116 S. Ct. 330

(1995). The Court also looks at various factors including: (1) whether a suspect is or is not told that she is free to leave; (2) the location and atmosphere of the interrogation; (3) the language and tone used by the police; (4) whether the suspect is searched, frisked, or patted down; and (5) the length of the interrogation. *Tankleff v. Senkowski*, 135 F. 3d, at 244 (internal citations omitted).

In contrast, the Seventh Circuit employs a totality of the circumstances test to determine a person's custody status for purposes of *Miranda*. That Court has stated, "Custody 'implies a situation in which the suspect knows he is speaking with a government agent and does not feel free to end the conversation; the essential element of a custodial interrogation is coercion.'" *United States v. Thompson*, 496 F.3d 807, 810 (7th Cir. 2007) (citing *United States v. Salyers*, 160 F.3d 1152, 1159 (7th Cir.1998) (quoting *United States v. Martin*, 63 F.3d 1422, 1429 (7th Cir.1995))). The Court further makes an inquiry into whether, objectively, a reasonable person would have believed that he or she was free to leave, and considers the following factors: (1) whether the encounter occurred in a public place; (2) whether the suspect consented to speak with the officers; (3) whether the officers informed the individual that he was not under arrest and was free to leave; (4) whether the individual was moved to another area; (5) whether there was a threatening presence of several officers and a display of weapons or physical force; (6) and whether the officers' tone of voice was such that their requests were likely to be obeyed. *United States v.*

*Thompson*, 496 F.3d at 810-811 (citing *United States v. Lennick*, 917 F.2d 974, 977 (7th Cir. 1990)) (see also *United States v. Barker*, 467 F.3d 625, 628-629 (7th Cir. 2006)).

In yet another articulation, the Ninth Circuit has determined that “a Court must, after examining all of the circumstances surrounding the interrogation, decide ‘whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.’” *United States v. Kim*, 292 F.3d 969, (9th Cir. 2002) (quoting *Stansbury v. California*, 511 U.S. 318, 322 (1994)). Further, the Court focuses on the objective circumstances of the interrogation, not the subjective views of the officers or the individual being questioned, and then determines whether a reasonable person would believe that he or she was not free to leave. *Id.* (citing *United States v. Beraun-Panez*, 812 F.2d 578, 580 (9th Cir.), modified by 830 F. 2d 127 (9th Cir. 1987)). The Court looks to the following factors to make that determination: “(1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual.” *Id.* (quoting *United States v. Hayden*, 260 F.3d, 1062, 1066 (9th Cir. 2001)).

Finally, the Eleventh Circuit considers first, whether the person was seized, and then “whether a reasonable person would have understood his freedom of action



to have been curtailed to a degree associated with formal arrest.” *United States v. Luna-Encinas*, 600 F.3d 876, 881 (11th Cir. 2010). Then the Court looks to the totality of the circumstances, including the following factors: (1) whether the officers brandished weapons; (2) whether the officers touched the suspect, or used language or a tone that indicated that compliance with the officers could be compelled; and (3) the location and length of detention. *Id.* (citing *United States v. Street*, 472 F.3d 1298, 1309 (11th Cir. 2006) (see e.g., *United States v. Brown*, 441 F.3d 1330, 1348 (11th Cir. 2006))).

Looking at these four examples, it is clear that the various ways in which the Circuit Courts determine whether an individual is “in custody” for purposes of *Miranda* leads to inconsistent results. The defendants in *United States v. Kim* and *Tankleff v. Senkowski* were found to be “in custody” for purposes of *Miranda*, while the defendants in *United States v. Luna-Encinas* and *United States v. Thompson* were found to not be “in custody” for purposes of *Miranda*.

In this case, on direct appeal, the Ninth Circuit determined that Ms. Scott was not “in custody” for purposes of *Miranda*. Ms. Scott asserts that the District Court and the Ninth Circuit erred in that judgment. However, applying the tests set forth by other circuits might have yielded different results. Therefore, Ms. Scott’s case provides this Court with the opportunity to outline one rule to determine whether or

not a person is “in custody” for purposes of *Miranda* and thus settle the inconsistent rules set forth by the various United States Courts of Appeal.

**II. THE DISTRICT COURT AND THE NINTH CIRCUIT ERRED IN FINDING THAT MS. SCOTT WAS NOT “IN CUSTODY” FOR PURPOSES OF MIRANDA.**

Applying the factors set forth in *United States v. Hayden*, and again articulated in *United States v. Kim*, the Ninth Circuit erred in finding that Ms. Scott was not “in custody” for purposes of *Miranda*. Looking first to the language used to summon Ms. Scott to the police station, Ms. Scott was told by law enforcement that she “needed” to go to the police station to get more information pertaining to her minor son, who was being investigated for shooting another minor. A reasonable person in Ms. Scott’s position would not have felt free to ignore law enforcement and not go to the police station given the circumstances. Next, taking the extent to which Ms. Scott was confronted with evidence of guilt, she was asked point-blank by Robins during his interview, “Is it reasonable to believe that you bought the gun for [Ray]?” to which Scott answered “yes.” Robins also asked Scott, “But you used his debit card, so you really got it for him, didn’t you?” These questions directly confronted Ms. Scott with evidence of her guilt. The physical surroundings of the interrogation also point to a custodial interrogation, as Ms. Scott was removed from a public area at the police station, to a windowless room, alone with an armed officer, where the door was pulled shut, but not latched. Next, the duration of the interview

was only twenty (20) minutes; however, Ms. Scott was physically present at the police station for much longer. Last, the degree of pressure applied to detain Ms. Scott was high due to the fact that her minor son was present at the police station and being investigated for a shooting. Looking at these factors as a whole, the District Court and the Ninth Circuit erred when they found that Ms. Scott was not “in custody” for purposes of *Miranda*.

Further, Scott argued on direct appeal that her case was analogous to *United States v. Kim* because her original purpose for going to the police station was to find her minor son and be present for his own questioning—not because she thought she was a suspect in a crime and would be subjected to questioning. The Ninth Circuit disagreed, noting “[t]hese circumstances sharply contrast with those in *United States v. Kim*, 292 F.3d 969, 977-78 (9<sup>th</sup> Cir. 2002), where the mother was separated from her family in a locked location and where two officers subjected her a to ‘full-fledged interrogation,’ in part without an interpreter.” APP002 – APP003.

However, other case law in the Ninth Circuit supports the finding that an individual can be subjected to custodial interrogation for purposes of *Miranda* when separated from his or her minor child. In *United States v. Mora-Alcaraz*, the defendant was at a shopping mall with his minor son when he was contacted by the police by telephone, who wished to speak with him about allegations of domestic violence involving his ex-wife and her new boyfriend from the prior night. *United*



*States v. Mora-Alcaraz*, 986 F.3d 1151, 1153-1154 (9th Cir. 2021). The defendant agreed to meet with the police outside of the shopping mall. *Id.* The officer arrived with three other armed officers, and one officer asked to speak to the defendant away from his minor son. *Id.* The defendant agreed, and two out of the four officers escorted the boy into the entrance of a store because it was cold outside. *Id.*

The officer then spoke with the defendant in a friendly, conversational tone, which led to the defendant eventually admitting to being an illegal alien and possessing a firearm. *Id.* The defendant moved to suppress his statements, arguing that he was not given *Miranda* warnings and he was subjected to a custodial interrogation. *Id.* The District Court agreed, and suppressed his statements. *Id.* The United States appealed, arguing that the defendant was not “in custody” for purposes of *Miranda*, and the Ninth Circuit affirmed the District Court’s suppression of his statements, finding that the Ninth Circuit correctly determined that he was “in custody” for purposes of *Miranda*. *Id.*

In reaching that conclusion, the Ninth Circuit applied the factors set forth in *Hayden* and *Kim*, and discussed *supra*. See *United States v. Mora-Alcaraz*, 986 F.3d at 1156. Further, the Court concluded that similar to the defendant in *Kim* being physically separated from her family, “despite the lack of physical restraints, Mora-Alcaraz was subjected to severe pressure as a result of the police separating him

from his son.” *Id.*, at 1157. Thus, “a reasonable person in Mora-Alcaraz’s position would not have felt free to end the questioning and leave the mall.” *Id.*

As previously discussed, Ms. Scott came to the police station because her minor son had been taken there because he was being investigated regarding the shooting of another minor. This applied considerable pressure on Ms. Scott, much like the defendants in *Kim* and *Mora-Alcaraz*, and a reasonable person in her position would have thought that he or she was required to be at the police station. For these reasons, the District Court and the Ninth Circuit erred in finding that Ms. Scott was not “in custody” for purposes of *Miranda*.

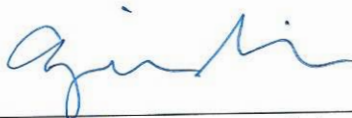
## CONCLUSION

The Courts of Appeals inconsistently analyze whether a person is “in custody” for purposes of *Miranda*. Furthermore, Ms. Scott’s Fifth Amendment Rights were violated when she was subjected to custodial interrogation without being advised pursuant to *Miranda*. In consideration of the foregoing, Petitioner urges the Court to grant certiorari review in order to resolve this important question. Petitioner respectfully submits that the Petition for Certiorari should be granted.

Dated this 16<sup>th</sup> day of July, 2021.

Respectfully submitted,

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