No. 21-7415

IN THE SUPREME COURT OF THE UNITED STATES

MATTHEW RAUSENBERG,

PETITIONER,

VS.

DONALD LANGFORD, WARDEN,

RESPONDENT,

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

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QUESTIONS PRESENTED

Whether reasonable jurists could debate the issue of custody for Miranda purposes, as various state and federal courts have, when an individual has been detained, held incommunicado in a police dominated atmosphere, and interrogated without receiving Miranda warnings?

Whether under the totality of circumstances approach, all relevant circumstances should be considered in the custody analysis, including specific statements from interrogators that a defendant is not allowed to call anybody for help?

Whether a state habeas petitioner may satisfy his burden under 28 U.S.C. 2253(c)(2) of making a substantial showing of a constitutional right for the issuance of a certificate of appealability by pointing to multiple rulings from other federal courts that have resolved the same claim "in a different manner" than the district court did in his case upon similar facts?

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Petitioner Matthew Rausenberg ("Petitioner") respectfully prays that a writ of certiorari will be issued to review the order of the United States Court of Appeals for the Sixth Circuit entered in case No. 21-3042 on July 23, 2021.

OPINION BELOW

On July 23, 2021, the United States Court of Appeals for the Sixth Circuit filed an order denying Petitioner's motion for a certificate of appealability as to the district court's dismissal of his petition for a writ of habeas corpus by a person in custody. (App. 1a). The order is published. The United States District Court entered its judgement of dismissal and order denying a certificate of appealability on December 16, 2020.

been read his Miranda rights. The district judge denied the claim, dismissed the petition, and refused to issue a certificate of appealability. (App 5a)

Petitioner requested the Sixth circuit Court of appeals to grant him a certificate of appealability. He argued that the similarity between the facts and issues of his case and appeals decided by the First, Fifth, Eighth, and Tenth Circuits in other petitioner's favor was sufficient to satisfy the "reasonable jurists" standard affirmed by this court in Slack v. McDaniel, 529 U.S. 473 (2000). The court denied his request. (App. 1a)

JURISDICTION

Petitioner seeks review of the order from the United States Court of Appeals for the Sixth Circuit entered on July 23, 2021. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). *See Hohn v. United States*, 524 U.S. 236, 253 (1998) ("We hold this court has jurisdiction under 1254(1) to review denials of applications for certificates of appealability by a circuit judge or panel of a court of appeals.")

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

United States Constitution, Fifth Amendment:

> No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without the due process of law.

United States Constitution, Fourteenth Amendment:

> No state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law.

United States Constitution, Fourth Amendment:

28 U.S.C. 2241(a):

> Writs of habeas corpus may be granted by the Supreme Court, by any justice thereof, by the district courts and any circuit judge within their respective jurisdictions.

28 U.S.C. 2253(c):

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of the process issued by a State court[.]

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made substantial showing of the denial of a constitutional right.

28 U.S.C. 2254(d):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United states[.]

STATEMENT OF THE CASE

Petitioner is a state prisoner serving 106 years to life as a result of jury convictions for gross sexual imposition, kidnapping, and pandering sexually oriented material involving a minor, entered in the Delaware County, Ohio Court of Common Pleas. After exhausting all state appellate remedies, Petitioner filed for a writ of habeas corpus in the United States District for the Southern District of Ohio.

Petitioner's principal claim asserts the uses of un-warned statements were used against him at trial, and those statements helped the prosecution obtain a conviction. Rausenberg argues that when he was detained by armed detectives, held incommunicado in a police dominated atmosphere, kept in sight of interrogators at all times, and interrogated for over two hours, Miranda warnings should have been administered. Petitioner believes that his Fifth and Fourteenth amendment rights were violated.

On March 16, 2015 at 4:00 p.m., three armed Delaware County police detectives and two armed federal agents arrived at Petitioner's classroom where he was employed as a teacher (State Court record, R. 4-1, Page ID#742-43). Within 30 seconds of their arrival, all other school

personnel left the scene and detectives dominated the atmosphere, controlling every movement Petitioner made. (*ID.* at 750). Detective Campbell made it clear from the onset that it was urgent they spoke with Petitioner when he told Rausenberg, "It was necessary for us to come out here and talk to you, get the search warrants." (Suppression Ex. 1, at 20:45 to 20:49) At that point the detectives escorted Petitioner to a conference room on the other side of the building and closed the door. Rausenberg was directed to sit on the side of the table away from the door, and Detective Campbell sat in between Petitioner and the door. The audio recording reveals that it became apparent to Petitioner early on in the questioning that his detention would not end in the school conference room. Detective Bessinger proceeded to tell Rausenberg that police had his house surrounded and he would be letting them in his home for execution of a second search warrant at his house, which was in a different city, forty-five minutes away, and that he would remain under the control of interrogators until that time. (Suppression Ex. 1 at 17:05 to 17:24) In addition, Detective Bessinger made it clear again that the detention wouldn't end told him that, 'We're going to leave you at your house tonight." (*Id.* At 21:18 to 21:19) Detective Campbell said, "We can all just caravan." (Id. at 26:45 to 26:46)

Detective Campbell put specific limitations on his ability to leave when he said, "*As soon as were done here*, you're free to leave." (Suppression Ex., at 26:33 to 26:41). After some questioning, Rausenberg stated that he'd rather move around then talk at the moment. Petitioner was then told by Detective Bessinger that he was being "KEPT" in their sight solely to hold him incommunicado. Specifically, he said, "We're only kind of keeping you in sight *so that you don't call anybody to do anything for you.*" (Id. At 45:41 to 46:00)

About forty-eight minutes into the interrogation the Detectives wanted to search Petitioner's car in the parking lot. Rausenberg was escorted by Detective Bessinger to the car.

While outside of the conference room for the only time during the interrogation, the Detective told Petitioner to "remain within eyesight." (Suppression Ex. 1, at 48:30 to 48:34). This restriction along with everything that occurred up to this point proves that Rausenberg was not able to leave the sight of his interrogators let alone leave the scene. To further exacerbate the custody issue beyond incommunicado detention and an hour of questioning, a federal agent began interrogating Petitioner and made it clear that charges were imminent, but they were deciding between State or Federal charges.

After about one hour and twenty minutes, Rausenberg was growing impatient and asked when they would be done. Detectives then told him," Just hang tight. We'll figure out what the next step is going to be." (Id. at 1:40:24 to 1:40:28) Two hours into the interrogation, Rausenberg asked Detective Campbell if he had to keep answering questions. The detective responded, "I keep coming up with questions." (Id. at 2:12:55 to 2:12:57)

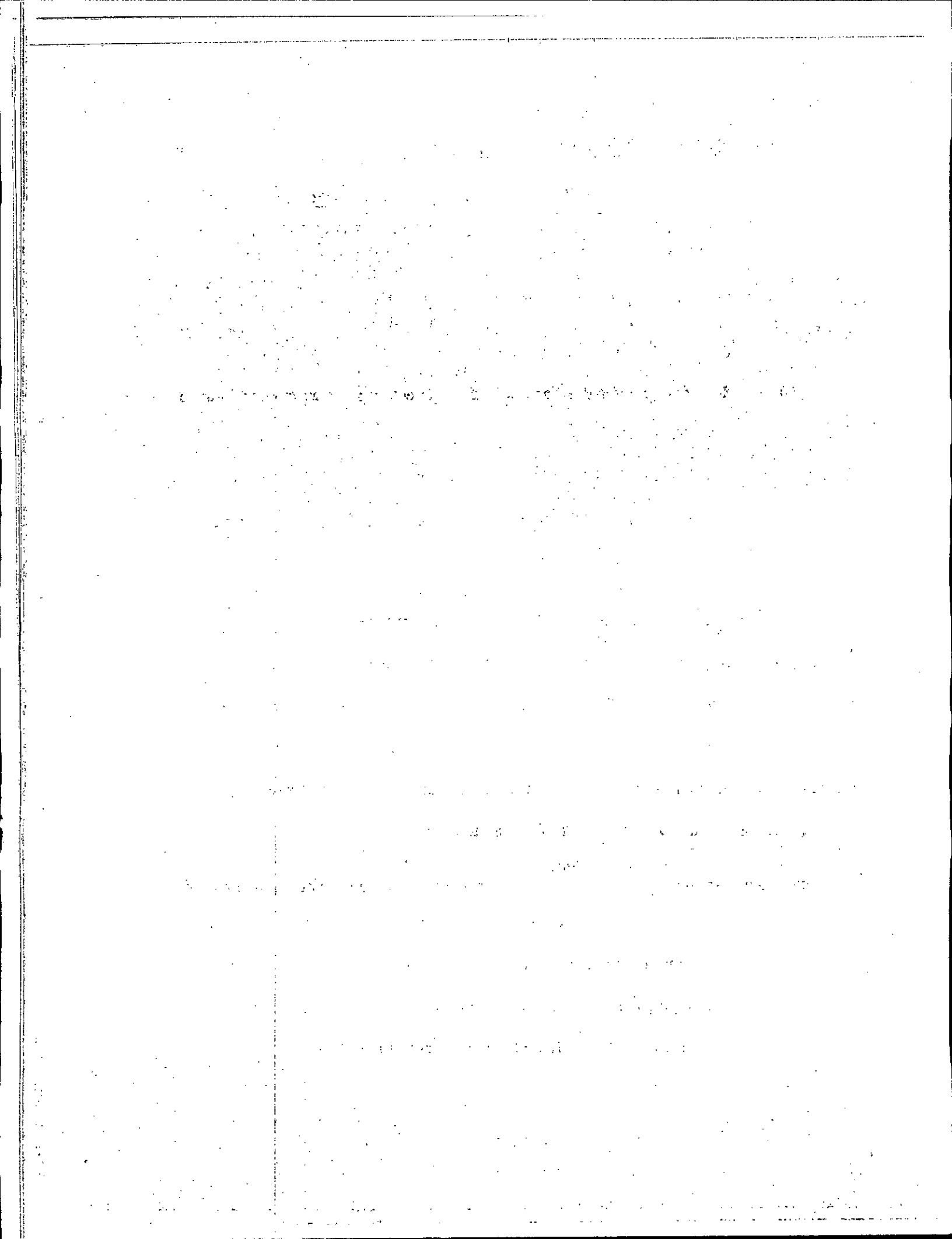
At this point, any reasonable person would understand that the detectives were completely in charge of the scene, they couldn't leave until Detectives were done, couldn't leave the sight of interrogators, couldn't call anybody for help, and apparently had to answer questions until the detective didn't have anymore. At the conclusion of the interrogation, Petitioner was read his rights and placed under arrest.

The Ohio Court of Appeals denied Petitioner's claim that his Fifth Amendment rights were violated, and affirmed his convictions. The Ohio Supreme Court declined to accept Petitioner's discretionary appeal.

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. The petition asserted that Rausenberg was in custody for Miranda purposes and by law should have

been read his Miranda rights. The district judge denied the claim, dismissed the petition, and refused to issue a certificate of appealability. (App 5a)

Petitioner requested the Sixth circuit Court of appeals to grant him a certificate of appealability. He argued that the similarity between the facts and issues of his case and appeals decided by the First, Fifth, Eighth, and Tenth Circuits in other petitioner's favor was sufficient to satisfy the "reasonable jurists" standard affirmed by this court in Slack v. McDaniel, 529 U.S. 473 (2000). The court denied his request. (App. 1a)



REASONS WHY THE WRIT OF CERTIORI SHOULD BE ISSUED

A STATE HABEAS PETITIONER MAY SATISFY HIS BURDEN UNDER 28 U.S.C. 2253(C)(2) OF MAKING A SUBSTANTIAL SHOWING OF A DENIAL OF A FEDERAL CONSTITUTIONAL RIGHT OS AN ISSUANCE OF A CERTIFICATE OF APPEALABILITY BY POINTING TO A RULING FROM ANOTHER FEDERAL COURT THAT HAS RESOLVED THE SAME CLAIM "IN A DIFFERENT MANNER" THAN A DISTRICT COURT DID IN HIS SAME CASE UPON SIMILAR FACTS.

A state prisoner does not enjoy an automatic right for appeal from a district court judgement adversely disposing of his position for a writ of habeas corpus. Under the Antiterrorism and Effective Death Penalty of 1996 ("AEDPA"), he must pursuade the district judge or circuit judge of the potential merits by making a substantial showing of a denail of a constitutional right 28 U.S.C. 2253(c)(2).

The "substantial showing" requirement means that he must demonstrate that "reasonable jurist could debate (or, for matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed furthe." *Slack*, 529 U.S. at 484 (qouting *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 4 (1983)). This standard does not require him to "show that he should prevail on the merits." After all, [h]e has already failed in that endeavor." *Barefoot*, 463 U.S. at 893, n. 4.

Under our system of stare decisis, a petitioner will have an uphill battle in making this showing if the weight of the judicial authority is overwelmingly against his position. Conversely, he should prevail in this pursuit if he can point to another ruling from another federal court that has resolved the same issue "in a different manner" upon similar facts.

In applying for a certificate of appealability from the Court of Appeals, Petitioner cited such rulings from multiple Federal Courts, specfically the First Circuit's opinion in *United States v. Mitel-Carey*, 493 F 3d 36, 40 (1st cir. 2007), and the Eighth's Circuit's opinion in *United States v. Griffin*, 922 F. 2d 1343, 1349 (8th Cir. 1990). As does the petitioner in this case, both of these cases involve execution of search warrants, detention of defendants, and interrogation while all movements were controlled by police. Even though both of these defendants were ruled in custody, defendant argues that his circumstances illustrated even more restraint because detectives specifically told he that he could not "call anybody for help." Secondly. both of these cases involve detention at the defendants home, which is less coercive than Defendant's place of employment, and they were still found to be in custody for Miranda purposes. Both of these defendants were interrogated for close to two hours and Petitioner in this case was interrogated for over two hours.

In *Mitel-Carey,* detectives executed a search warrant at the defendant's home, kept him in sight of detectives, he was escorted when he moved, and the court concluded that it was the level of control polce had over the scene and defendant which created a custodial atmosphere. Specifically, the court reasoned that, "The government argues that the physical control was neccessary to preserve potential evidence within the house and protect the saftey of officers. While that may be so, this justification does not answer the very different question of whether a reasonable person, who is interrogated up to two hours and not permitted to freedom of movement within his own home, would believe he was not at liberty to terminate the interrogation and leave. We believe that a reasonable person in Mitel-carey's position would conclude that he was not free to do so. if the government is correct that the agents' actions were

neccessary for evidence preservation and officer safety, then it could [**11] have chosen to postpone the interrogation until a non-custodial moment, or to Mirandize Mitel-carey. Either step would have protected both the defendant's constitutional rights and the officers' legitimate law enforcement needs (*Mitel-Carey).*

In another similar case, *United States v. Griffin,* 922 F. 2d 1343, 1349 (8th Cir. 1990), a search warrant was executed at the defendant's home and he was advised to remain in sight of interrogators when he went to have a cigeratte. "We realze that the likely effect on a [*1351] suspect being placed under guard during questioning, or told to remain in sight of interrogating officials, is to associate these restraints with a formal arrest." In Griffin as in Mitel-carey, the court was concerned with the amount to control the police had over the defendant. Specifically, "other circumstances which indicate police domination of the custodial surrondings concern whether the police assume control of the interrogation site and "dictate the course of conduct followed by the [suspect]" or other persons present at the scene. Jones, 630F 2d at 616 Where the conduct of the police leads a suspect to believe that the police have taken full control of the scene, then we are more likely yo recognize the existence of custody. A frequently reccurring example of police domination concerns with the removal of the suspect from friends, family, or colleagues who might lend moral support during the questioning and deter a suspect from making inculpatory statements, an establishesd practice noted by the Miranda court. Miranda, 384 U.S. at 451, 86 S. Ct. at 1615. The Griffin court concluded that "When polce resort to domineering practices, we find there exists a greater probability that an objective, reasonable person would feel in custody during the interrogation. (*Id.* at 26).

Both of the defendants in the cases discussed above, and the Petitioner in this case,

experienced extremely similar situations of being detained during the execution of a search warrant, had movements controlled by interrogators, and interrogated for approximately two hours. However, the two subjects that were interrogated at their own home under these restrictions were found to be in custody. On the other hand, Rausenberg was detained at his place of employment (not his home), experienced the same level of control by interrogators, interrogated for the same amount of time, *yet also told he was not able to call anyone for help and would be remaining with interrogators for a second search,* but ruled not in custody. With these different rulings based on such similar facts, it is quite apparrant that "reasonable jurists" could debate whether a reasonable person in Rausenberg's situation would have belived they were in custody for Miranda purposes.

In regards to the detention during the excution of a search warrant, this court discussed some of reasoning behind the ability to detain in Michigan v Summers 452 U.S. 692 (1981) "The type of detention here is not likely to be expoited by the officer or unduly prolonged in order to gain more information, because the information the officer's seek will normally be obtained through the search and not the detention." (**2594) However, in the current case Rausenberg was detained for the execution of a search warrant, however, all pertinent information used against him at trial stemmed from the detention and not the search inself. His statements that were used against him at trial were taken directly from the interrogation while detained, and the passcode to his phone was also discovered during the interrogation and detention, rather than the search itself. This shows that the interrogators used the execution of the search warrant to legally detain Petitioner and competely control the scene so that they could interrogate Rausenberg without him being able to leave the scene.

CONCLUSION

The federal district court's disposition of Petitioner's habeas petition creates a dangerous precedent that will only encourage unscrupulous law enforcement officials to deprive criminal defendants of their Miranda rights. The district court mentioned that Petitioner never tried to leave the scene of the interrogation. However, Petitioner was told by armed detectives and Federal Agents to remain in their sight and that he was being kept in sight so that he couldn't contact anyone for help. In today's day and age of police shootings and other public deviance to police that causes harm to individuals for not listening to police and following orders, the last thing Rausenberg should have tried to do was get up and leave, especially after being told that he could not go anywhere. His house was surrounded, he was in complete control of police, kept in sight, and couldn't leave until interrogators were done there, and then would still be detained at a second search.

The Sixth Circuit applied the "substantial showing" standard under 28 U.S.C. 2253(c)(2) for a certificate of appealability in an overly strict and hypertechnical manner. Petitioner's case presents an opportunity for this Court to clarify that its interpretation of the statute in *Slack* was not intended to be an insurmountable barrier to appellate review of a potentially meritorious constitutional claim. For these reasons, Petitioner prays this court will grant his petition for certiorari, vacate the Sixth Circuit's order, and direct that Court to hear his appeal on the merits.

Respectfully submitted,

Matthew Rausenberg (pro se)

Dated: October 19, 2021