NO. 21-7703

In the Supreme Court of the United States

TYRONE WORTHAM,

Petitioner,

v.

NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of New York

BRIEF OF AMICI CURIAE JAMES CONNELL AND MEGHAN SKELTON IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE

James Goodman Connell, III, and Meghan Skelton[1] are attorneys specializing in criminal defense and human rights and practice in an area where some of the worst abuses of interrogation practices have occurred. In 2004, they published a law review article analyzing the circuit split at the heart of the Petition for a Writ of Certiorari,[2] which courts and scholars have cited when analyzing the issue presented in the petition here.[3] They have a strong interest in resolution of open questions surrounding Fifth Amendment protections for individuals during police questioning.

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[1] No counsel to any party to this action has authored this brief in whole or part. In addition, Amici Curiae have received no monetary contributions to the preparation or submission of this brief from any counsel, party, or other entity. *See* Rule 37.6. Finally, Amici have received consent from all parties to file this brief.

[2] Meghan S. Skelton and James G. Connell, III, *The Routine Booking Question Exception to Miranda*, 34 U. Balt. L. Rev. 55 (2004).

[3] *See, e.g., State v. Palacio*, 442 P.3d 466, 474 (Kan. 2019); *Alford v. State*, 358 S.W.3d 647, 655 (Tex. Ct. Crim. App. 2012); *People v. Gomez*, 192 Cal. App. 4th 609, 629 (Cal. Ct. App. 2011); *State v. Boyd*, 628 S.E.2d 796, 803 (N.C. App. 2006); Julie A. Simeone, *Not So Legitimate: Why Courts Should Reject an Administrative Approach to the Routine Booking Question Exception*, 89 N.Y.U. L. REV. 1454, 1456 n.12 (2014); Elizabeth Parrish, *In Need of Clarification: A Call to Define the Scope of the Routine Booking Exception by Adopting the Legitimate Administrative Function Test*, 62 CATH. U.L. REV. 1087 n.2 (2013).

SUMMARY OF THE ARGUMENT

Police officers compelled the petitioner, Tyrone Wortham, to incriminate himself during custodial questioning while they executed a search warrant without giving *Miranda* warnings. Then the prosecution used this unwarned custodial confession in its case in chief to convict Mr. Wortham, arguing that his statement that his girlfriend let him stay at the apartment where contraband was found established illegal possession of firearms and drugs.[4]

The court below held that the questioning fell within a "routine booking" or "pedigree" question exception to *Miranda* because the questions sought biographical information—name, address, age—that was reasonably related to the administrative concerns of police taking individuals into custody and that a reasonable person would not see the questioning as a disguised attempt to investigate a crime.[5] The court considered the content of the questions, an objective observer's assessment of the questioning, and the intent of the police.

By applying a routine booking question exception, the court below implicated a well-established and outcome-determinative split in interpretation of the Fifth Amendment. Other jurisdictions apply markedly different tests to analyze the nature, scope, and even existence of a "routine booking question" or "pedigree" exception to *Miranda*. One group of jurisdictions applies a purely objective standard, inquiring whether the

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[4] *See* Pet. App. 2a-3a, 7a.

[5] *Id.* at 7a.

question is reasonably likely to elicit an incriminating response. A second group follows a purely subjective approach, requiring *Miranda* warnings if the police intend to elicit an incriminating response. A third group applies a categorical approach: if police questioning seeks the defined category of biographical data, no *Miranda* warnings are necessary. And others follow hybrid combinations of all three, like the court below.

About fifty years ago, courts started recognizing a routine booking question exception to *Miranda*,[6] but the federal circuits and states have reached divergent and irreconcilable results. Moreover, multiple courts recognize the existence of this deep and mature split.[7] The Court should grant certiorari to provide needed guidance.

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[6] *See, e.g., United States v. LaVallee*, 521 F.2d 1109, 1112-13 (2d Cir. 1975) (holding that a question seeking marital status was basic identifying information required for booking that does not require *Miranda* warnings); *State v. Kincaide*, 602 P.2d 307, 311 (Or. 1979) (holding that asking someone's name after arrest is not interrogation and therefore does not implicate *Miranda*).

[7] *See, e.g., Alford*, 358 S.W.3d at 658; *Boyd*, 628 S.E.2d at 803; *City of Fargo v. Wonder*, 651 N.W. 2d 665, 669 (N.D. 2002) *Hughes v. State*, 695 A.2d 132, 138-39 (Md. 1996).

ARGUMENT

Under the competing approaches to the routine booking question exception, the same Fifth Amendment . . . . means different things depending on a defendant's geographical location and charging authorities' choice of state or federal court. If Petitioner were charged in the Eastern District of New York instead of Kings County, New York, the Second Circuit's objective standard would govern his questioning. If Petitioner were charged in Kings County, California, the categorical approach would apply. If Petitioner were charged in King County, Washington, the court would apply the subjective approach. These differences matter—the Ninth and D.C. Circuits and North Carolina have reached the opposite result on the same facts below.

This Court has addressed booking questions twice. First, in *Rhode Island v. Innis*,[8] this Court defined "interrogation" to include "words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response."[9] Ten years later, in *Pennsylvania v. Muniz*, a four-justice plurality recognized a *Miranda* exception for routine booking questions, such as a person's name, address, height, weight, eye color, date of birth, and current

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[8] 446 U.S. 291 (1980).

[9] *Id.* at 301.

age, because those questions "were not intended to elicit information for investigatory purposes."[10]

I. ALTHOUGH ALMOST ALL JURISDICTIONS RECOGNIZE SOME FORM OF AN EXCEPTION TO *MIRANDA* FOR ROUTINE BOOKING QUESTIONS, MULTIPLE DIFFERENT STANDARDS HAVE RESULTED IN A DEEP AND MATURE MULTI-WAY SPLIT BETWEEN THE STATES AND THE CIRCUITS.

Innis and *Muniz* have spawned at least four different approaches to police questioning about biographical information. Courts focusing on *Innis's* definition of interrogation examine whether the questioning is reasonably likely to elicit incriminating information. Courts that focus on the *Muniz* plurality inquire into the officers' subjective intent when asking the questions. Some jurisdictions treat booking or pedigree questions as categorically lacking *Miranda*'s Fifth Amendment protections. And some jurisdictions, like the court below, blend aspects of all of these inquiries.

The majority approach and its variations, followed by half the Circuits and fifteen states, draw on *Innis*'s objective definition of the functional equivalent of interrogation. Five Circuits[11] and seven states[12] base

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[10] 496 U.S. 582, 601 (1990) (Brennan, J., plurality op.).

[11] *United States v. Zapien*, 861 F.3d 971, 975 (9th Cir. 2017) ("Once the import of the booking exception is properly understood as part and parcel of the question whether there has been 'interrogation,' it becomes clear that the determinative question is whether the officer 'should have known that his questions were reasonably likely to elicit an incriminating response.'" (quoting *United States v. Poole*, 794 F.2d 462, 466, *amended on denial of reh'g by* 806 F.2d 853 (9th Cir. 1986); *United States v. Sanchez*, 817 F.3d 38, 45 (1st Cir. 2016) ("Ultimately, the booking exception's applicability turns on an 'objective' test that asks 'whether the

questions and circumstances were such that the officer should have reasonably expected the questions to elicit an incriminating response"—meaning 'the officer's *actual* belief or intent,' although 'relevant,' is in no way 'conclusive.'" (citations omitted)); *United States v. Knope*, 655 F.3d 647, 652 (7th Cir. 2011) ("Under *Miranda v. Arizona* and *Rhode Island v. Innis*, the test for whether Knope was subject to interrogation is 'whether a reasonable objective observer would have believed that the . . . question[] claimed by [the defendant] to have been unlawful interrogation [was] in fact 'reasonably likely to elicit' an incriminating response." (quoting *United States v. Abdulla*, 294 F.3d 830, 824 (7th Cir. 2002) (alterations in original))); *Rosa v. McCray*, 396 F.3d 210, 222 (2d Cir. 2005) ("To determine whether the police abused the gathering of pedigree information in a manner that compels *Miranda* protection requires an objective inquiry: Should the police have known that asking the pedigree questions would elicit incriminating information?"); *United States v.* Avery, 717 F.2d 1020, 1025 (6th Cir. 1983) ("[C]ourts should carefully scrutinize the factual setting of each encounter of this type. Even a relatively innocuous series of questions may, in light of the factual circumstances and the susceptibility of a particular suspect, be reasonably likely to elicit an incriminating response.").

12 *State v. Etienne*, 930 A.2d 726, 732-733 (Conn. App. 2007) ("'The exception does not arise, however, if the questions are reasonably likely to elicit an incriminating response in a particular situation.'" (quoting *State v. Cuesta*, 791 A.2d 686 (Conn. App. 2002))); *Ares v. State*, 937 A.2d 127, 131 (Del. 2007) (holding that officer "should have known that his question was likely to elicit an incriminating response."); *State v. Harms*, 55 P.3d 884, 895 (Idaho 2002) (concluding officer "should have known that his request was reasonably likely to elicit an incriminating response"); *Dunlap v. Commonwealth*, 435 S.W.3d 537, 599 (Ky. 2013) (holding that officer "knew, or should have known, that it was reasonably likely to elicit an incriminating response (which, incidentally, it did)"); *Hughes v. State*, 695 A.2d 132, 140 (Md. 1997) ("[T]he critical inquiry is whether the police officer, based on the totality of the circumstances, knew or should have known that the question was reasonably likely to elicit an incriminating response."); *State v. Golphin*, 533 S.E. 168, 200 (N.C. 2000) ("In an effort not to infringe upon an accused's constitutional rights, however, the

a routine booking question exception on whether a question seeking biographical data is reasonably likely to elicit an incriminating response. The Second Circuit states this objective approach most elegantly: "Should the police have known that asking the pedigree questions would elicit incriminating information?"[13]

This objective approach includes some variations. The Eighth Circuit, Iowa, and Nebraska follow a variation that asks whether "'the government agent should reasonably be aware that the government information sought . . . is directly relevant to the substantive offense charged.'"[14] Georgia and Hawaii draw on *Innis* for a totality of the circumstances test, which includes

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exception is limited to '*routine informational* questions necessary to complete the booking process that are *not* "reasonably likely to elicit an incriminating response" from the accused.'" (quoting *State v. Ladd*, 302 S.E.2d 164, 173 (1983))); *State v. Rheaume*, 853 A.2d 1259, 1263 (Vt. 2004) ("[T]he test under *Muniz* is not whether the information disclosed could lead to a conviction, but instead whether the questions 'are reasonably likely to elicit an incriminating response from the suspect.'" (quoting *Muniz*, 496 U.S. at 601)); *State v. Denney*, 218 P.3d 633, 637 (Wash. App. 2009) ("When determining if the routine question exception applies, the court asks if the questioning party should have known that the question was reasonably likely to elicit an incriminating response.").

[13] *Rosa*, 396 F.3d at 222.

[14] *United States v. Tapia-Rodriguez*, 968 F.3d 891, 894 (8th Cir. 2020) (quoting *United States v. Ochoa-Gonzalez*, 598 F.3d 1033, 1038 (8th Cir. 2010)); *see also United States v. Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996) (quoting *United States v. McLaughlin*, 777 F.2d 388, 391-92 (8th Cir.1985)); *State v. Sallis*, 574 N.W.2d 15, 18 (Iowa 1998) (citing *Brown*, 101 F.3d at 1274); *State v. Bormann*, 777 N.W.2d 829, 837 (Neb. 2010) (citing *Brown*, 101 F.3d at 1274).

the objective likelihood of eliciting an incriminating response.[15]

Two Circuits[16] and three states[17] follow a subjective test derived from *Muniz*, examining whether a question is designed to elicit an incriminating response. Generally, this subjective test identifies the *Innis*-

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[15] *Franks v. State*, 486 S.E.2d 594, 597 (Ga. 1997) (applying totality of the circumstances test); *State v. Ketchum*, 34 P.3d 1006, 1019-20 (Haw. 2001) (Under state constitution, "the ultimate question regarding 'interrogation' is whether the questioning officer knew or reasonably should have known that his or her question was likely to elicit an incriminating response, that fact that a question is in the nature of a 'routine booking question' is merely one consideration among many relevant to an assessment of the totality of the circumstances.").

[16] *United States v. Virgen-Moreno*, 265 F.3d 276, 293-94 (5th Cir. 2001) ("Nevertheless, questions designed to elicit incriminatory admissions are not covered under the routine booking question admission."); *United States v. Parra*, 2 F.3d 1058, 1068 (10th Cir. 1993) ("Thus, where questions regarding normally routine biographical information are designed to elicit incriminating information, the questioning constitutes interrogation subject to the strictures of Miranda.").

[17] *Campos v. People*, 484 P.3d 159, 163 (Colo. 2021) ("[S]uch questions asked of an in-custody suspect can fall outside the bounds of the routine booking question exception when, for example, a police officer asks such questions in the context of investigating a crime and the question is designed to elicit incriminating information."); *State v. Widmer*, 461 P.3d 881, 887 (N.M. 2020) ("'Nevertheless, questions designed to elicit incriminatory admissions are not covered under the routine booking exception.'" (quoting *United States v. Virgen-Moreno*, 265 F.3d 276, 293 (5th Cir. 2001))); *State v. Montiel-Delvalle*, 468 P.3d 995, 1005 (Ore. Ct. App. 2020) ("That is, for the booking question exception to apply, a question must be normally attendant to arrest and custody and "not designed" to elicit incriminating information, even if it is reasonably likely to do so.").

based objective inquiry, but supplants it. For example, Oregon's appellate courts hold, "Routine booking questions . . . are not considered interrogation even if they are reasonably likely to elicit incriminating information."[18] Thus, under Oregon's interpretation of the Fifth Amendment, "for the booking question exception to apply, a question must be normally attendant to arrest and custody and 'not designed' to elicit incriminating information, even if it is reasonably likely to do so."[19]

A third approach, followed by eight states,[20] avoids inquiry into either intent or expected outcome by

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[18] *Montiel-Delvalle*, 468 P.3d at 1004 (citing *State v. Lanier*, 413 P.3d 1020 (Ore. App. 2018) (emphasis in original).

[19] *Id.* (quoting *State v. Moeller*, 211 P.3d 364 (Ore. App. 2009)).

[20] *Varner v. State*, 418 So.2d 961, 962 (Ala. Ct. Crim App. 1982); *Magar v. State*, 836 S.W.2d 385, 386 (Ark. App. 1992) ("Questions that are asked to secure biographical data necessary to complete booking or pretrial services and which are reasonably related to the administrative concerns of the police fall outside the protections of *Miranda*."); *People v. Elizalde*, 351 P.3d 1010, 1015 (Cal. 2015) (Supreme Court "authority recognizes that, for a limited category of booking questions involving biographical data, no *Miranda* warnings are required and admission of the defendant's answers at trial does not violate the Fifth Amendment. For questions outside this limited category, however, answers given, without an admonition, to questions an officer should know are reasonably likely to elicit an incriminating response may not be admitted in the prosecution's case-in-chief."); *People v. Dalton*, 434 N.E.2d 1127, 1129 (Ill. 2002) (The question is "whether *Miranda* prohibits inquiry into certain basic identifying data concerning a defendant, where the response, as here, might establish an element of the crime with which he is charged. The decisions in other jurisdictions which have considered the question support the conclusion that such inquiry is not barred."); *Loving v. State*, 647 N.E.2d 1123, 1126 (Ind. 1995) ("However, routine administrative questions such as name, address, height, and

establishing approved categories of routine booking questions. In these states, the primary question is whether the question relates to administrative concerns, not the individual circumstances of the officer or the case. Texas and California both follow this approach.

As an example, Texas' journey to the categorical approach demonstrates the need for this Court to act. The Court of Criminal Appeals of Texas explained in *Alford v. State* that, "The meaning of this footnote [*Muniz*, n.14] and how courts are to apply it has been the subject of debate among courts throughout the country."[21] It further observed that "'booking exception cases around the country are confusing and conflicting.' Texas case law is no exception."[22] Indeed,

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weight, regardless whether considered within a 'routine booking exception' or whether deemed 'not testimonial,' are removed from the requirements of *Miranda*."); *State v. Hale*, 892 N.E.2d 864, 881 (Ohio 2008) ("The personal-history questions were routine booking questions, and the requirement that police administer Miranda warnings before questioning a suspect in custody does not apply to routine booking questions."); *Commonwealth v. Jasper*, 587 A.2d 705, 708-09 (Pa. 1991) ("Generally speaking, general information such as name, height, weight, residence, occupation, etc. is not the kind of information which requires Miranda warnings since it is not information generally considered as part of an interrogation."); *Alford v. State*, 358 S.W.2d 647, 659-60 (Tex. Ct. Crim. App. 2012) ("After considering the diverse interpretations of the booking-question exception, we conclude that, in deciding the admissibility of a statement under the exception, a trial court must determine whether the question reasonably relates to a legitimate administrative concern, applying an objective standard.").

[21] *Alford*, 358 S.W.3d at 655 (citing Skelton & Connell, *supra* n. 2, at 78-94).

[22] *Id.* at 656 (quoting government's brief).

it conceded that, given the chaotic mix of approaches, both the defendant's proposed *Innis*-based approach "and the State's assertions find support in [Texas] jurisprudence."[23]

Courts in jurisdictions without a defined approach[24] face exactly the same challenge. In *City of Fargo v. Wonder*, for example, police raided a young-adult party and asked partygoers under age 21 to raise their hands.[25] After the government appealed suppression of the raised hands, the Supreme Court of North Dakota cited cases in support of the three different "conflicting viewpoints on application of *Miranda*" to booking questions: categorical, objective, and subjective.[26]

Ultimately, the Texas court in *Alford* rejected the majority *Innis*-based standard as leading to an "absurd result," and charted its own path within the categorical approach: "a trial court must examine whether, under the totality of the circumstances, a question is reasonably related to a legitimate administrative con-

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[23] *Id.* at 657. The court identified four different approaches among Texas appellate cases. *Id.*

[24] *See, e.g.*, *Everett v. Secretary, Dep't of Corrections*, 779 F.3d 1212, 1242 (11th Cir. 2015) (noting existence of exception without analysis); *United States v. Bishop*, 66 F.3d 569, 572 n.2 (3d Cir. 1995) (recognizing routine booking question exception without more); *United States v. D'Anjou*, 16 F.3d 604, 608 (4th Cir. 1994) (declining to reach application of Ninth Circuit standard); *Toler v. United States*, 198 A.3d 767, 770-71 (D.C. 2018) (applying routine booking question exception without clear standard).

[25] 651 N.W. 2d 665, 668 (N.D. 2002).

[26] *Id.* at 669.

cern."[27] As a kicker, however, it explicitly left open the possibility of an additional limitation "when an officer's actual intent was to elicit incriminating admissions," *i.e.*, the *Muniz*-based subjective approach the Fifth Circuit follows.[28]

Finally, some states—including New York—adopt a hybrid standard which draws on more than one of the main approaches.[29] New York's standard in particular —articulated in *Rodney*[30] and clarified in *Wortham*— has added to the confusion. The court below explicitly applied categorical, objective, and subjective aspects, drawing on all three previous approaches. First, as a "threshold requirement," the question must be "reasonably related to administrative concerns."[31] Next, inquiring into the subjective intent of the police, New York prohibits police from using questions about biographical data as a "disguised" attempt to investigate a crime.[32] But recognizing the difficulty of assessing the subjective intent of police, New York adds an objec-

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[27] *Alford*, 358 S.W.2d at 661.

[28] *Id.* at 660 n.27 (citing *Parra*, 2 F.3d at 1068).

[29] *Thomas v. Commonwealth*, 850 S.E.2d 400, 411 (Va. App. 2020) (quoting *Watts v. Commonwealth*, 562 S.E.2d 699, 705 (Va. App. 2002))); *Commonwealth v. Chadwick*, 664 N.E.2d 874, 876 (Mass. App. Ct. 1996) (evaluating whether "an objective observer would infer that [a question] was designed to elicit an incriminating response"). *But cf. Commonwealth v. Mercado*, 993 N.E.2d 661, 668 n.9 (Mass. 2013) (declining to address scope of routine booking question).

[30] 648 N.E.2d 471, 474 (N.Y. 1995).

[31] Pet. App. 6a.

[32] *Id.* at 7a.

tive gloss—would "a reasonable person conclude based on an objective analysis that the pedigree question 'was a disguised attempt at investigatory interrogation'"?[33]

The Texas court in *Alford* criticized *Rodney* "simply reading out any distinction between the *Muniz*-footnote 'design' language and the *Innis* test, applying the latter to all custodial inquiries regardless of their potential administrative outcome."[34] The Court of Appeals of Maryland in *Hughes v. State* likewise faulted *Rodney* because it "defined the routine booking question exception in the language of *Muniz*, but . . . then employed the *Innis*-based standard as if the two formulations were interchangeable."[35] The District of Columbia relied on both Maryland's *Hughes* decision and the exact New York *Rodney* language *Hughes* criticized, then observed that both cases' test "differs somewhat from the *Muniz* plurality[]."[36]

The competing tests mean that different versions of the Fifth Amendment apply in the same geographical area. Sometimes, federal courts must assess state decisions under competing routine booking question standards.[37] In the Ninth Circuit alone, California,

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[33] *Id.* (quoting *Rodney*, 648 N.E.2d. at 474).

[34] *Alford*, 358 S.W.2d at 658 & n.23 (citing *Rodney*, 648 N.E.2d at 474).

[35] *Hughes*, 695 A.2d at 139 (citing *Rodney*, 648 N.E.2d at 474).

[36] *Thomas v. United States*, 731 A.2d 415, 423 n.12 (D.C. 1999).

[37] *See Rivera v. Thompson*, 879 F.3d 7, 16 n.5 (1st Cir. 2018) (applying objective First Circuit standard to Massachusetts conviction under hybrid approach); *Rosa*, 396 F.3d at 222 (applying objective Second Circuit standard to New York state conviction

Washington, Oregon, and Hawaii ask different questions to assess the admissibility of answers to purported routine booking questions. A California intermediate appellate court even had to wrestle with the question of whether to follow its own state Supreme Court or the Ninth Circuit approach to routine booking questions.[38]

II. DIFFERING APPROACHES TO ROUTINE BOOKING QUESTIONS LEAD TO DIFFERENT RESULTS FOR THE SAME QUESTION.

Given this fractured state of the law, small wonder, then, that courts applying different standards have reached different results on the same basic facts. The biographical fact at issue here—the suspect's address—demonstrates the impact of the split.

If the petitioner had been arrested and tried in North Carolina, which applies an objective, *Innis*-based approach, his custodial statement would have been suppressed. Similar to the instant case, in *Boyd v. State*, the defendant was convicted of multiple drug offenses, including possession with intent to distribute, after police seized drugs at a certain home.[39] An answer to a booking question established that the

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under *Rodney* standard); *Velazquez v. Lape*, 622 F. Supp. 2d 23, 30-33 (S.D.N.Y. 2008) (struggling to reconcile *Rodney* and *Rosa* with *Innis* and *Muniz*).

[38] *In re J.W.*, 56 Cal. App. 5th 355, 360-63 (Cal. App. 2020) ("Does the routine booking question exception to *Miranda* still apply when the questions posed—here, date of birth and current age—fall squarely within *Muniz*'s core definition of 'booking questions' but, on the facts of the specific case, are nevertheless 'reasonably likely to elicit an incriminating response from the suspect?'" (citing *Innis*, 446 U.S. at 301)).

[39] *Boyd*, 628 S.E.2d at 799.

defendant lived at that address. "A pivotal factor" to convict someone of the particular offense "is whether there is evidence that the defendant owned, leased maintained, or was otherwise responsible for the premises" where the drugs were found.[40]

On appeal, the state did not dispute that the booking question was "reasonably likely to elicit an incriminating response" under North Carolina's objective standard.[41] Knowing that the custodial statement establishing that the defendant lived at the relevant address was inadmissible under the objective *Innis*-based analysis of booking questions, "the state ask[ed] that [the court] adopt a different rule."[42] The court declined and found that the question about the defendant's address violated *Miranda* and did not fall within a routine booking question exception.[43]

Likewise, the Ninth Circuit, which also employs an objective *Innis*-based analysis of booking questions, would have reached a result similar to North Carolina and different from the court below. Also reviewing a conviction for drug offenses based on drugs found in a home, in *United States v. Disla*, the court determined that the police should have known that asking the defendant about "his residence was reasonably likely to elicit an incriminating response" and "related to an element (possession) of the crime."[44] The

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[40] *Id.* at 804.

[41] *Id.* at 803.

[42] *Id.*

[43] *Id.* at 803-04.

[44] 805 F.2d 1340, 1347 (9th Cir. 1986).

court thus determined that an unwarned response to a question about the defendant's address violated *Miranda*.[45] Although the court ultimately found the error harmless because, unlike *Boyd*, the government offered sufficient other evidence of the defendant's residence to establish possession,[46] the court's analysis demonstrates the impact of the different approaches to routine booking questions on the same sort of personal information.

Jurisdictions that follow a categorical approach would reach a different result. For example, in *United States v. Gaston*, the D.C. Circuit faced a similar issue regarding questioning about the defendant's address.[47] After handcuffing the defendants while executing a search warrant at their home, the police asked the defendants for their names and addresses—but did not provide *Miranda* warnings. Although the defendant's address and ownership interest in the house established possession of the contraband, the court decided that the question "related to administrative concerns."[48] The answer was therefore admissible, falling into the routine booking question exception.[49]

The Maryland Court of Appeals examined the impact of the different approaches to routine booking questions in *Hughes v. State*. Comparing the *Muniz-*

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[45] *Id.*

[46] *Id.*

[47] 357 F.3d at 81-82. Over time, the D.C. Circuit has applied multiple approaches.

[48] *Id.* at 82.

[49] *Id.*

and *Innis*-based approaches, the court explained, "The difference between the two standards is that the former limits the scope of the booking question exception based solely on the actual intent of the police officer in posing the question, while the latter restricts the exception based on an objective assessment of the likelihood, in light of both the context of the questioning and the content of the questions, that the question will elicit an incriminating response."[50] The court explained that the same seemingly benign question may violate *Miranda* under one standard, but not the other.

In *Hughes*, the question at issue sought information about the suspect's drug use—a question that was pre-printed on the county jail's booking form and that relates to the administration of the jail.[51] The court concluded that, in light of the relationship between the drug offenses charged, the particular question did not fall under a routine booking question *Miranda* exception. The question bore a close relationship to an element of the charged offense—possession—and thus was reasonably likely to elicit incriminating information.[52] But if Maryland followed a categorical approach, the answer to this question would probably have fallen under the booking question exception.

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[50] 695 A.2d at 138.

[51] *Id.* at 141.

[52] *Id.*; *see also id.* at 140.

CONCLUSION

This case presents a recurring and unresolved issue regarding the Fifth Amendment implications of routine police practices which have divided the circuits and states. This Court should grant the petition to provide needed guidance.

Respectfully submitted,

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