No. 23-6976

IN THE SUPREME COURT OF THE UNITED STATES

JUAN CABREBRA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NICOLE M. ARGENTIERI
Principal Deputy Assistant
Attorney General

DAVID M. LIEBERMAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner was "in custody" for purposes of Miranda v. Arizona, 384 U.S. 436 (1966), when a U.S. Border Patrol agent approached him at the U.S.-Mexico border fence and asked immigration-related questions.

ADDITIONAL RELATED PROCEEDING

United States District Court (S.D. Cal.):

United States v. Cabrera, No. 20-cr-435 (Nov. 17, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A27) is reported at 83 F.4th 729.

JURISDICTION

The judgment of the court of appeals was entered on September 29, 2023. A petition for rehearing was denied on December 19, 2023 (Pet. App. B). The petition for a writ of certiorari was filed on March 5, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of California, petitioner was convicted on one count of attempting to unlawfully enter the United States, in violation of 8 U.S.C. 1325(a)(1); and one count of attempting to unlawfully reenter the United States following removal, in violation of 8 U.S.C. 1326(a) and (b). Judgment 1. He was sentenced to 51 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A27.

1. Petitioner, a native and citizen of El Salvador, was removed from the United States in 2001 and, after illegally reentering the United States, was removed again in 2018. Pet. App. A6. In 2019, petitioner traveled to Tijuana and climbed one of the two border fences separating Mexico and the United States. Ibid. Petitioner then sat down. Ibid. Several minutes later, a U.S. Border Patrol agent arrived. Ibid. In Spanish, the agent asked petitioner about his citizenship, immigration documents, manner of entering the United States, and purpose in entering. Id. at A6-A7. Petitioner responded that he had entered the country "just for work." Id. at A7.

A grand jury in the Southern District of California charged petitioner with one count of attempting to unlawfully enter the United States, in violation of 8 U.S.C. 1325; and one count of

attempting to unlawfully reenter the United States following removal, in violation of 8 U.S.C. 1326. Pet. App. A7. Before trial, petitioner moved to suppress his statement to the Border Patrol agent about coming to the United States to find work. Pet. App. A8. Petitioner claimed the statement was inadmissible under Miranda v. Arizona, 384 U.S. 436 (1966), on the theory that he was "in custody" and the agent failed to provide warnings. Pet. App. A8.

The district court denied the motion, finding that petitioner "wasn't in custody for Miranda purposes." D. Ct. Doc. 101, at 42 (Jan. 3, 2022). Citing circuit precedent, the court explained that a Border Patrol agent who encounters an individual "wandering around down by the border fence" is allowed "to make inquiry." Id. at 41. The court explained that the agent's "inquiry under those circumstances doesn't convert [the encounter] into custodial interrogation," but instead makes it a simple investigatory "Terry stop," where "the Border Patrol [agents] are trying to ascertain what they have," which is not equivalent to Miranda custody. Id. at 42; see generally Terry v. Ohio, 392 U.S. 1 (1968).

The case proceeded to trial and the jury found petitioner guilty on both counts. Pet. App. A8.

2. The court of appeals affirmed, finding that the district court had not erred in admitting petitioner's "un-Mirandized statement at the border." Pet. App. A8; see id. at A1-A27.

The court of appeals observed that "[t]he case books are full of scenarios in which a person is detained by law enforcement officers, is not free to go, but is not 'in custody' for Miranda purposes.'" Pet. App. A8-A9 (citation omitted; brackets in original). The court highlighted, as an example, this Court's decision in Berkemer v. McCarty, 468 U.S. 420 (1984), which analogized traffic stops to "stops made pursuant to Terry v. Ohio, 392 U.S. 1 (1968)," and held that during brief and routine traffic stops, persons "'are not "in custody" for the purposes of Miranda.'" Pet. App. A9 (quoting Berkemer 468 U.S. at 440). And the court observed that its own precedents had consistently applied "Berkemer's reasoning to stops at the border," asking whether "the detention constituted a permissible Terry stop, or something more," and finding Miranda unnecessary where, for example, "the border patrol officer had reasonable suspicion to stop the car, and the stop was not overly intrusive." Id. at A9-A10.

Turning to the facts of this case, the court of appeals determined that "the district court did not err in denying [petitioner's] motion to suppress." Pet. App. A12. The court of appeals observed that the Border Patrol agent had "reasonable suspicion to believe [petitioner] may have been entering the country illegally." Id. at A11. It further observed that petitioner's detention "'was brief'" and "any 'restraint' * * * was limited and reasonable": it lasted ten minutes; the agent stood

three feet away from petitioner; the agent did not handcuff petitioner; and the agent did not issue threats, yell, or brandish his weapon. Ibid. (citation omitted). And the court determined that the agent's questions about petitioner's purpose in entering the United States fell within "'the scope of allowable inquiry.'" Id. at A12 (citation omitted).

The court of appeals then rejected petitioner's remaining claims. Pet. App. A12-A22. Judges Hamilton and Collins filed concurring opinions addressing those claims, but making no reference to petitioner's Miranda argument. Id. at A22-A24, A25-A27.

ARGUMENT

Petitioner renews (Pet. 6-20) his contention that he was in custody for purposes of Miranda v. Arizona, 384 U.S. 486 (1966) when questioned by a U.S. Border Patrol agent along the U.S.-Mexico border. The court of appeals correctly rejected this contention, and the court's decision does not conflict with any decision of this Court or of another court of appeals. No further review is warranted.

1. Under Miranda, statements made in custodial interrogation generally must be preceded by specified warnings in order to be admissible in the government's case-in-chief. See, e.g., Dickerson v. United States, 530 U.S. 428, 431-432 (2000). Miranda warnings, however, are not required in every instance of

official interrogation; they are necessary "only where there has been such a restriction on a person's freedom as to render him 'in custody.'" Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam). "As used in [the Court's] Miranda case law, 'custody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." Howes v. Fields, 565 U.S. 499, 508-509 (2012).

a. To determine whether a person is "in custody," "the initial step is to ascertain whether * * * a 'reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave.'" Howes, 565 U.S. at 509 (brackets and citations omitted). "Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last." Ibid. The Court's "'cases make clear . . . that the freedom-of-movement test identifies only a necessary and not a sufficient condition for Miranda custody.'" Ibid. (quoting Maryland v. Shatzer, 559 U.S. 98, 112 (2010)); see ibid. ("Not all restraints on freedom of movement amount to custody.").

Where a reasonable person would not feel free to leave, a court must "ask[] the additional question whether," based on all of the circumstances, "the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in Miranda." Howes, 565 U.S. at 509. As this Court repeatedly has explained, "the ultimate inquiry" is

"whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (per curiam) (quoting Mathiason, 429 U.S. at 495); accord Thompson v. Keohane, 516 U.S. 99, 112 (1995); Stansbury v. California, 511 U.S. 318, 322 (1994) (per curiam); Berkemer v. McCarty, 468 U.S. 420, 440 (1984); see Howes, 565 U.S. at 511 (comparing facts to "the paradigmatic Miranda situation" in which "a person is arrested * * * and whisked to a police station for questioning").

Applying that test, this Court held in Berkemer v. McCarty that a traffic stop does not necessarily constitute custody for purposes of Miranda. The Court acknowledged that "few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so." Berkemer, 468 U.S. at 436. It is "[p]artly for [that] reason[]" that a traffic stop constitutes a "'seizure'" under the Fourth Amendment. Id. at 436-437 (citation omitted). But even though "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers, if any, of the detained vehicle," id. at 436, "persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of Miranda," id. at 440.

b. In this case, the court of appeals correctly affirmed the district court's rejection of petitioner's motion to suppress

because -- like a motorist detained for a brief traffic stop -- petitioner was "not 'in custody' for the purposes of Miranda." Berkemer, 468 U.S. at 440. As the court of appeals explained, petitioner's detention was "'brief,'" lasting "approximately ten minutes," and "any 'restraint'" during that period was "limited and reasonable." Pet. App. A11 (citation omitted). The agent stood "three feet away" when he asked his questions, and "[h]e did not handcuff [petitioner], threaten or yell at him, or brandish his weapon." Ibid. Accordingly, the "relevant environment" did not present "the same inherently coercive pressures as the type of station house questioning at issue in Miranda," Howes, 565 U.S. at 509, rendering Miranda warnings unnecessary.

Petitioner asserts (Pet. 13, 16) that the court of appeals erred because it did not expressly invoke the two-step inquiry described in Howes v. Fields. But while the court did not cite Howes, the substance of its analysis was not materially different from the one Howes prescribes, looking to whether the interaction with the Border Patrol agent "constituted a permissible Terry stop, or something more." Pet. App. A10. In doing so, the court examined many of the same custody factors identified in Howes, noting the lack of handcuffs or display of the agent's service weapon, the absence of any threats or yelling, the three-foot distance separating the agent and petitioner, and the ten-minute duration of the questioning. Id. at A11; see Howes, 565 U.S. at 515

(factors include length of interview; whether officers were armed or used a "'sharp tone'"; whether suspect was "physically restrained or threatened"; and whether interview occurred in location where suspect was "'not uncomfortable'") (citations omitted). And petitioner has not cited any evidence that the court would have reached a different result had it invoked Howes more directly.

Petitioner likewise errs in criticizing (e.g., Pet. 13) the court of appeals' reference to Terry v. Ohio, 392 U.S. 1 (1968), in evaluating his Miranda claim. In Terry, this Court "held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Terry, 392 U.S. at 30). Such encounters do not constitute "a formal arrest" and "the detainee is not obliged to respond" to the officer's questions. Berkemer, 468 U.S. at 439. "The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in [this Court's] opinions that Terry stops are subject to the dictates of Miranda." Id. at 440. And because detention that is analogous to Terry is not Miranda custody, Terry supplies a relevant and highly useful benchmark for assessing whether a particular detention rises to the level of Miranda custody.

2. Petitioner errs in asserting (Pet. 6-13) that the decision below implicates division in the courts of appeals regarding the framework for analyzing whether a defendant was in custody for purposes of Miranda.

As a threshold matter, contrary to petitioner's assertion (Pet. 16), courts routinely invoke Terry in the Miranda context. Indeed, this Court and many of the courts of appeals cited favorably by petitioner (Pet. 8-9) have referenced the Terry framework when addressing whether a suspect was in custody for Miranda purposes.*

* See Shatzer, 559 U.S. at 113 ("[T]he temporary and relatively nonthreatening detention involved in a * * * Terry stop does not constitute Miranda custody.") (citation omitted); United States v. Campbell, 741 F.3d 251, 266 (1st Cir. 2013) ("[A]s a general rule, Terry stops do not implicate the requirements of Miranda, because Terry stops, though inherently somewhat coercive, do not usually involve the type of police dominated or compelling atmosphere which necessitates Miranda warnings.") (internal quotation marks and citation omitted); Cruz v. Miller, 255 F.3d 77, 82 (2d Cir. 2001) (noting "[t]he exemption of typical Terry stops from Miranda requirements "); United States v. Leggette, 57 F.4th 406, 411 (4th Cir. 2023) ("[A]n officer's actions that fall within the bounds of a lawful Terry stop do not create custody under Miranda."); United States v. Galberth, 846 F.2d 983, 994 (5th Cir.) ("Such Terry-stops do not render a person in custody for purposes of Miranda."), cert. denied, 488 U.S. 865 (1988); United States v. Salvo, 133 F.3d 943, 949 (6th Cir.) ("[B]ecause of the very cursory and limited nature of a Terry stop, a suspect is not free to leave, yet is not entitled to full custody Miranda rights."), cert. denied, 523 U.S. 1122 (1998); United States v. Johnson, 680 F.3d 966, 975 (7th Cir.) ("Miranda warnings are not required during Terry investigatory stops."), cert. denied, 568 U.S. 1036 (2012), overruled on other grounds by Fowler v. Butts, 829 F.3d 788 (7th Cir. 2016); United States v. Acosta, 363 F.3d 1141, 1150 (11th Cir. 2004) ("The restraint to which [the

Petitioner also errs in claiming (Pet. 10) that decisions of the Eighth and Tenth Circuits apply "only the first step" of the two-step Miranda analysis. That claim rests on a misunderstanding of Howes. In Howes, this Court clarified that determining that a defendant was not free to leave is only the first step in the Miranda analysis; it is "only a necessary and not a sufficient condition for Miranda custody." 565 U.S. at 509. If it is satisfied, the court must move on to an "additional" second step in which it asks whether the circumstances created "the same inherently coercive pressures" as those present in Miranda itself. Ibid. But when a defendant cannot even satisfy the first step, there is obviously no need to move on to the second.

That is what occurred in each of the Eighth and Tenth Circuit cases petitioner cites (Pet. 10): The court of appeals found that Miranda warnings were unnecessary because the defendant was free to leave, obviating the need to proceed to Howes' second-step inquiry. See, e.g., United States v. Sandell, 27 F.4th 625, 628-629 (8th Cir. 2022); United States v. Wagner, 951 F.3d 1232, 1252 (10th Cir. 2020). Nor is there any other evidence that those circuits have "ignored" Howes, as petitioner claims (Pet. 9). See, e.g., United States v. Johnson, 39 F.4th 1047, 1050-1052 & n.2 (8th Cir. 2022) (citing Howes, supra, in rejecting Miranda claim

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defendant] was subjected during the Terry stop is the minimal amount necessary for such a stop or close to it. * * * No Miranda warnings were required at the time.").

because defendant was free to leave during questioning); Wagner, 951 F.3d at 1252 (citing Howe and finding that "Miranda warnings were not required" because defendant would have felt free to leave). And, at all events, this case -- in which the court of appeals' analysis was consistent with Howes, see pp. 8-9, supra -- would not be an appropriate vehicle for addressing any claims about the practices of the Eighth and Tenth Circuits.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NICOLE M. ARGENTIERI
Principal Deputy Assistant
Attorney General

DAVID M. LIEBERMAN
Attorney

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