No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BUTA SINGH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

KATIE HURRELBRINK
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467

Attorneys for Petitioner

QUESTIONS PRESENTED

In *Howes v. Fields*, 565 U.S. 499 (2012), the Court established a two-step test for determining whether a suspect is "in custody" for purposes of *Miranda v. Arizona,* 384 U.S. 436 (1966). Under step one, courts consult a list of relevant factors to determine whether a reasonable person would feel free to leave. But because "[n]ot all restraints on freedom of movement amount to custody for purposes of *Miranda*," courts then proceed to the second step of determining "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* at 509.

In the dozen years since *Howes*, nine circuit courts have adopted this two-step test. But the Eighth and Tenth Circuits continue to apply only the first step. And the Ninth Circuit sometimes applies the first step and sometimes considers a completely different test—whether the stop was permissible under *Terry v. Ohio*, 392 U.S. 1 (1968). Accordingly, the question presented is:

Whether courts must apply the second step of *Howes* to determine if a person is "in custody" for *Miranda* purposes.

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Buta Singh and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Singh,* No. 19-CR-3623-BLM, U.S. District Court for the Southern District of California, opinion issued September 11, 2020.
- *United States v. Singh*, No. 20-50245, U.S. Court of Appeals for the Ninth Circuit. Unpublished opinion issued April 5, 2024.
- *United States v. Singh*, No. 20-50245, U.S. Court of Appeals for the Ninth Circuit. Order denying petition for panel rehearing and rehearing en banc issued July 3, 2024.

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INTRODUCTION

In *Howes v. Fields*, 565 U.S. 499 (2012), the Court established a two-step test for determining whether a suspect is "in custody" for purposes of *Miranda v. Arizona,* 384 U.S. 436 (1966). Nine circuit courts apply that test. Three do not.

The Eighth and Tenth Circuits have never mentioned the second step of this test—let alone applied it. And the Ninth Circuit applies only the first step or else holds, as it did in *United States v. Cabrera*, 83 F.4th 729 (9th Cir. 2023), that the relevant inquiry is whether a stop is "permissible pursuant to *Terry*, rather than whether [the person] was 'in custody' pursuant to *Miranda*." *Cabrera*, 83 F.4th at 735. As a result, federal courts in nearly every state west of the Mississippi River apply a different rule for determining "custody" than federal courts in every state east of the Mississippi River. To ensure that all federal courts are uniformly

applying the Court's precedent on a critical and oft-arising Fifth Amendment issue, the Court should grant certiorari.

OPINION BELOW

A divided panel of the Ninth Circuit affirmed Mr. Singh's conviction in an unpublished opinion. *See United States v. Singh*, No. 20-50245, 2024 WL 1477401 (9th Cir. Apr. 5, 2024) (attached here as Appendix A). Mr. Singh then petitioned for panel rehearing and rehearing en banc. On July 3, 2024, a majority of the panel voted to deny Mr. Singh's petition for panel rehearing, and the full court declined to hear the matter en banc (attached here as Appendix B).

JURISDICTION

On April 5, 2024, the Ninth Circuit denied Mr. Singh's appeal and affirmed his conviction. *See* Appendix A. Mr. Singh then filed a petition for panel rehearing and rehearing en banc, which the Ninth Circuit denied on July 3, 2024. *See* Appendix B. This Court thus has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

On July 9, 2019, a camera operator stationed at the U.S.-Mexico border spotted a raft attempting to cross a canal into the United States. As he watched the raft's occupants reach the northern bank, cross a dirt road, and enter some bushes, he radioed Border Patrol for back-up. Four border patrol agents answered the call. They found and quickly arrested Buta Singh.

One agent, Agent Barron, tracked footprints from the water to some brush beneath a tree. Mr. Singh was "nestled" in the vegetation. The agent called out to

Mr. Singh, first in English, then in Spanish. Mr. Singh did not react. He then gestured for Mr. Singh to come out of the brush. Mr. Singh complied. Agent Barron recalled that he had "seen that kind of behavior before, and it indicate[d] to [him] that [Mr. Singh] didn't understand" his English- and Spanish-language statements. He asked Mr. Singh whether he spoke Punjabi, and Mr. Singh nodded. Agent Barron then handcuffed Mr. Singh together with two other suspects. He brought all three to a border patrol vehicle and handed them off, still handcuffed, to a second border patrol agent.

This second agent, Agent Fulton, patted down the three men, removed their handcuffs, and placed them in his truck. The truck bed had been converted into a "secure" space for transporting detainees—a kind of "cell on wheels." Another detainee, a Spanish-speaking man, was already seated there when the new detainees arrived.

Once the new detainees were seated in the "cell," Agent Fulton began filling out "field processing form[s]." Field processing forms are "record[s] of an arrest." The form records details like where the person was arrested, by whom, and how. The form also has blanks for the person's name, date of birth, country of citizenship, and place of birth.

To fill in those blanks, Agent Fulton wanted to obtain any identity documents that the suspects had in their possession. But when it came to Mr. Singh, the agent had a problem: He could speak only English and Spanish, and Mr. Singh spoke neither. So, he began with the Spanish-speaking detainee. He "asked [the Spanish-

speaking detainee] for his documents," saying, "Tienes documentos?" He explained that almost "everyone in the vehicle" caught on and began "doing as I said"; "they all started getting out their documents." But Mr. Singh "didn't do anything" in response to Agent Fulton's orders. Agent Fulton tried again. He "pointed at [Mr. Singh], and [he] was like, 'Documents. Documents.'"

Finally, "the other guy in the back of the vehicle"—the Spanish speaker—"actually pointed to his pocket." Only then did Mr. Singh respond, "Oh, ok," and hand a passport to Agent Fulton. Agent Fulton opened the passport and copied down the biographical and nationality information noted there. Mr. Singh was subsequently driven to the Border Patrol station for processing.

At trial, the prosecutor did not produce the passport or lay the foundation to admit it as a public record. And though Agent Fulton testified at trial, he could not authenticate any part of the passport other than the page with the biographical information. The prosecutor moved to admit that passport page, or at least the information on it, into evidence.

Defense counsel lodged several objections. First, she made a Fourth Amendment challenge to the passport's admission. In response, the prosecutor argued that the passport was seized "incident to arrest," noting that the search was done "to get a sense of what the[] [suspects] have on their person at the time of their arrest." This was borne out by Agent Fulton's testimony. Asked whether Mr. Singh was "under arrest when he was in the van," Agent Fulton replied, "Yes." Asked

whether Mr. Singh was "free to go," Agent Fulton responded, "No." The magistrate judge agreed, finding that the document "was seized pursuant to an arrest."

Second, defense counsel lodged a hearsay objection to admitting that page into evidence. The prosecutor responded that Mr. Singh had adopted the passport's contents by handing it over to the agent, rendering it an admissible party opponent statement. *See* Fed. R. Evid. 801(d)(2)(B). The magistrate judge, again, agreed.

Third, defense counsel objected that if the passport's contents were indeed adoptive admissions, those admissions were obtained without *Miranda* warnings. That made them inadmissible, because in the unique circumstances of Mr. Singh's case, he was "in custody" at the time Agent Fulton asked for his passport. *Miranda* custody applies whenever "there [is] a formal arrest *or* restraint on freedom of movement of the degree associated with a formal arrest." *Stansbury v. California,* 511 U.S. 318, 322 (1994) (emphasis added). Defense counsel argued that both prongs of this custody test applied: Mr. Singh was "formal[ly] arrest[ed]," *id*., as shown by Agent Fulton's explicit testimony, the arrest paperwork that he was actively filling out when he requested the passport, and the magistrate judge's search-incident-to-arrest findings. And Mr. Singh experienced a restraint on freedom of movement of the degree associated with a formal arrest, inasmuch as he was handcuffed, moved to a cage transport vehicle, placed with other arrestees, and made to empty his pockets. Especially given that Mr. Singh could not communicate with the arresting agents, he was unlikely to think that he was being detained merely for questioning.

The magistrate judge overruled the Fifth Amendment objections, notably, she did not change her conclusion that Mr. Singh was under arrest. Instead, she opined that "an agent can ask, 'What is your citizenship?' to someone who is arrested right at the border" without providing *Miranda* warnings. Having overruled all objections, the magistrate judge admitted the passport.

The prosecutor then admitted a second piece of evidence establishing alienage: a visa application, in which the applicant admitted to being a citizen of India. But in closing, defense counsel contended that the government could not prove, beyond a reasonable doubt, that the applicant was the same Buta Singh on trial for illegal entry. To rebut that argument, the prosecutor pointed to the passport. "When you look at the visa identifiers—so the name, the date of birth, nationality, city of birth—those all correspond to Page 3 of the passport that was found in the defendant's pocket," she said. That, in turn, was "extremely strong evidence that this individual who was arrested in Calexico was the individual who provided those exact same identifiers in the year 2014 in India."

Ultimately, the magistrate judge relied on the visa application to find alienage. The magistrate judge rejected defense counsel's argument that the government had not proved that the visa applicant was her client, find that "the information in this document as well as the picture is sufficient to establish that it is the defendant who provided that information and that all of the information in [the visa application] is information that came from the defendant."

The defense appealed to the Ninth Circuit on the ground that the magistrate judge erred in admitting the passport. Again, the defense argued that Mr. Singh was both formally arrested and subject to a restraint on freedom associated with an arrest. In response, the government argued that Mr. Singh was not in custody under the totality of the circumstances.

A divided Ninth Circuit panel, however, elided the custody question altogether. *United States v. Singh*, No. 20-50245, 2024 WL 1477401, at *2 (9th Cir. Apr. 5, 2024). It did so by citing *Cabrera*. *Cabrera* had held that when it comes to border stops, courts do not ask "whether [the defendant] was 'in custody' pursuant to *Miranda*." 83 F.4th at 735. Instead, courts must assume that immigration stops are mere noncustodial *Terry* stops and ask whether the stop exceeded *Terry*'s bounds. *See id*. In keeping with this approach, the panel asked whether "whether the detention constituted a permissible *Terry* stop, or something more." *Singh*, 2024 WL 1477401, at *2 (quoting *Cabrera*, 83 F.4th at 734). Because the questioning in Mr. Singh's case was appropriate to a *Terry* stop, the panel majority held that no *Miranda* warnings were required. *Id*. The panel also held that any error in admitting the passport was harmless, because a visa application had independently established Mr. Singh's alienage. *Id*.

Judge Fletcher dissented. The dissent chose to focus on Mr. Singh's argument that he was in custody under the totality of the circumstances. *Id*. at *2–3 (Fletcher, J., dissenting). Mr. Singh's total compliance with officer commands, the high suspect-to-officer ratio involved in the apprehension, his jail-like surroundings

during the interrogation, and the agent's testimony that Mr. Singh was under arrest at the time all pointed toward custodial interrogation. *Id*. at *3. The dissent also concluded that, contrary to the majority's claim, admitting the statement was not harmless. *Id*. at *3.

This petition follows.

REASONS FOR GRANTING THE PETITION

I.

The courts of appeals are applying different tests to determine whether a person is "in custody" for purposes of *Miranda*.

Under this Court's most recent precedent, judges must apply a two-step test to determine whether a person is "in custody" for purposes of *Miranda*. *See Howes v. Fields*, 565 U.S. 499 (2012). The "initial step" requires courts to consider the "objective circumstances of the interrogation" to determine whether "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Id.* at 509 (quotations and alterations omitted). Factors relevant to this analysis include the "location of the questioning," its "duration," the "statements made," any use of "physical restraints," and whether the person is released "at the end of the questioning." *Id*.

But even if these factors suggest a reasonable person would not feel free to leave, "[n]ot all restraints on freedom of movement amount to custody for purposes of *Miranda*." *Id*. So under *Howes*, courts must then proceed to the second step by asking the "additional question" of "whether the relevant environment presents the

same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.*

In the dozen years since this Court issued *Howes*, most circuit courts have adhered to its two-part test to determine whether a suspect is "in custody" for purposes of *Miranda*. But three holdouts remain. The Eighth and Tenth Circuits have yet to acknowledge *Howes'* second step and continue to apply only the first step of whether a reasonable person would feel free to leave. The Ninth Circuit usually does the same. But in the context of border-related detentions, the Ninth Circuit does not even do this—instead, it determines whether a stop is "permissible pursuant to *Terry*, rather than whether [the person] was 'in custody' pursuant to *Miranda*." *Cabrera*, 83 F.4th at 735. To ensure that all the circuits are uniformly applying established precedent on an important Fifth Amendment issue, this Court should grant certiorari.

A. *Howes* set forth a two-step test for determining whether a person is "in custody" for *Miranda* purposes.

In *Howes v. Fields*, this Court considered whether an inmate who was taken to a separate room and questioned about events that occurred before he came to prison was "in custody" for *Miranda* purposes. 565 U.S. at 505. The Court observed that "custody" is a "term of art that specifies circumstances that are thought generally to present a serious danger of coercion." *Id.* at 508–09. Thus, to determine whether a person is in custody, the "initial step" is to decide "whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Id.* at 509

(quotations, citation, and alteration omitted). To do so, courts consider a series of "[r]elevant factors," such as the "location of the questioning," its "duration," the "statements made during the interview," the use of any "physical restraints," and "the release of the interviewee at the end of the questioning." *Id.*

But the Court clarified that determining whether "an individual's freedom of movement was curtailed" is "simply the first step in the analysis, not the last." *Id.* Because the Court has "'declined to accord talismanic power' to the freedom-of-movement inquiry," it explained that "[n]ot all restraints on freedom of movement amount to custody for purposes of *Miranda*." *Id.* (quoting *Berkemer v. McCarty,* 468 U.S. 420, 437 (1984)). Thus, after courts analyze the freedom-of-movement factors under step one, they must ask an "additional question" under step two—whether "the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* Because step one is only a "necessary and not a sufficient condition for *Miranda* custody," the facts must satisfy both steps before an interrogation is deemed custodial. *Id.*

B. Nine courts of appeals have adopted *Howes*' two-step test.

In the dozen years since *Howes*, most circuit courts have applied this two-step approach to custodial determinations. Citing *Howes*, the First Circuit explained that "[a] two-step inquiry is used to determine whether a suspect is in custody," in which courts decide 1) whether a reasonable person would have felt free to leave and 2) if not, whether "the environment in which the interrogation occurred 'presented the same inherently coercive pressures as the type of station house

questioning at issue in *Miranda*.'" *United States v. Monson*, 72 F.4th 1, 10 (1st Cir. 2023) (quoting *Howes*, 565 U.S. at 509) (alteration omitted). The Eleventh Circuit similarly explained that "[o]ur evaluation of this coercion question proceeds in two steps." *United States v. Woodson, 30 F.4th* 1295, 1303 (11th Cir. 2022) (citing Howes); *see also United States v. LeGgette*, 57 F.4th 406, 410–11 (4th Cir. 2023) (discussing the "two steps" for determining custody under Howes).

Even courts that have not expressly referred to the inquiry as a two-step analysis still apply the second prong. For instance, the Seventh Circuit stated that "[i]n the end, there is no custody unless 'the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda.*'" *United States v. Cox*, 54 F.4th 502, 511 (7th Cir. 2022) (quoting *Howes*, 565 U.S. at 509); *see also United States v. Schaffer*, 851 F.3d 166, 175 (2d Cir. 2017) ("Where there is evidence that an individual's freedom to move was limited, courts should consider whether 'the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.'") (quoting *Howes*); *United States v. Ludwikowski*, 944 F.3d 123, 131 (3d Cir. 2019) (same); *United States v. Howard*, 815 F. App'x 69, 78–79 (6th Cir. 2020) (same); *United States v. Cooper*, 949 F.3d 744, 748 (D.C. Cir. 2020) (same). Indeed, the Fifth Circuit reversed where a district court had "confined its analysis to the first inquiry" and the interrogation did not occur in "in an environment resembling the station house questioning at issue in *Miranda*." *United States v.*

Coulter, 41 F.4th 451, 457–58 (5th Cir. 2022). Thus, nine courts of appeals follow the *Howes*' two-step approach to custodial determination.

C. Three courts of appeals apply only the first *Howes* step or a different test entirely.

As these nine courts of appeals have shown, the *Howes* two-step test for determining custody is not complicated. Yet inexplicably, three circuit courts have ignored it, continuing to apply their own pre-*Howes* precedent.

The Eighth Circuit applies only the first step of "whether, given the totality of the circumstances, a reasonable person would have felt at liberty to terminate the interrogation and leave or cause the agents to leave." *United States v. Sandell*, 27 F.4th 625, 628–29 (8th Cir. 2022) (quotations omitted); *see also United States v. Treanton*, 57 F.4th 638, 641 (8th Cir. 2023) ("We consider 'the circumstances surrounding the questioning and whether, given those circumstances, a reasonable person would have felt free to terminate the questioning and leave.'") (quoting *United States v. Ferguson*, 970 F.3d 895, 901 (8th Cir. 2020)). The Tenth Circuit does the same—curiously, by quoting *Howes* but *only* as to the first step. *See United States v. Wagner*, 951 F.3d 1232, 1250 (10th Cir. 2020) ("An interrogation is custodial when, 'in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave.'") (quoting *Howes*, 565 U.S. at 509); *see also United States v. Guillen*, 995 F.3d 1095, 1109 (10th Cir. 2021). Neither the Eight nor Tenth Circuit has ever applied or even mentioned the second step of whether "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.

The Ninth Circuit takes an even more arbitrary approach. In many situations, the Ninth Circuit mirrors the Eighth and Tenth Circuits by applying only the first step of whether a reasonable person "would have felt, under a totality of the circumstances, that they were not at liberty to terminate the interrogation and leave." *United States v. Mora-Alcaraz*, 986 F.3d 1151, 1155 (9th Cir. 2021) (quotations omitted). Under this inquiry, the Ninth Circuit applies the "*Kim* factors," which pre-date *Howes* and largely resemble the *Howes* first-step inquiry.*Id.* at 1156 (citing *United States v. Kim*, 292 F.3d 969 (9th Cir. 2002)).

But in cases involving border-related detentions, the Ninth Circuit applies an entirely different test. In a series of cases, the court has likened border stops to the traffic stop at issue in *Berkemer,* 468 U.S. 420, concluding that border-related stops are "ordinarily a *Terry* stop" not requiring *Miranda* warnings.*United States v. Galindo-Gallegos*, 244 F.3d 728, 732 (9th Cir. 2001). So rather than applying the factors set forth in *Howes* (or even *Kim*), the Ninth Circuit focuses on *Terry*-related factors such as whether there was "reasonable suspicion" for the stop and whether the questions were "reasonably limited in scope" to the justification for the stop. *United States v. Cervantes-Flores*, 421 F.3d 825, 830 (9th Cir. 2005). For instance, in one case where a Border Patrol agent prevented a person from leaving a parking lot by "blocking his car, approaching it with his gun drawn, and interrogating him about his citizenship and immigration status," the court refused to consider the

question of whether a reasonable person would feel free to leave, holding only that the agent did not exceed the scope of *Terry* or *Berkemer*. *United States v. Medina-Villa*, 567 F.3d 507, 520 (9th Cir. 2009), *as amended* (June 23, 2009).

In *Cabrera*, the Ninth Circuit doubled down on this approach in a published opinion. It acknowledged that "[o]rdinarily, we assess whether someone is 'in custody' for *Miranda* purposes by determining whether a reasonable innocent person in such circumstances would conclude that after brief questioning he or she would not be free to leave." *Cabrera*, 83 F.4th at 734. But because this was a border-related stop, the court refused to conduct this step-one analysis, asking instead "whether the detention constituted a permissible *Terry* stop, or something more." *Id*. In fact, the court abandoned any pretense of applying the *Howes* step-one factors, stating that, "in considering Cabrera's case, we must determine whether his being questioned in between the border fences was permissible pursuant to *Terry*, rather than whether he was 'in custody' pursuant to *Miranda*." *Id*. at 735.

But the *Howes* test is different than the *Terry* test. *Terry* held that an officer may briefly detain and question a person so long as the stop's "intensity and scope" do not transform it into an "unreasonable" search or seizure under the Fourth Amendment. *Terry*, 392 U.S. at 18. But *Howes* raises an entirely different constitutional question—not whether the officer's actions were "reasonable," but whether the officer's actions, combined with the "coercive pressures" of the "relevant environment," trigger an objective conclusion that a person was in custody. *Howes*, 565 U.S. at 509; *see also Leggette*, 57 F.4th at 411 n.5 ("*Terry*'s Fourth Amendment

analysis and *Miranda*'s Fifth Amendment analysis remain distinct inquiries, focused on different questions."). So while an unreasonable stop under the Fourth Amendment might contribute to the coercion that transforms a detention into custody for *Miranda* purposes, "the Fifth Amendment's strictures, unlike the Fourth's, are not removed by showing reasonableness." *Fisher v. United States*, 425 U.S. 391, 400 (1976);*New York v. Quarles*, 467 U.S. 649, 653 n.3 (1984) (same);

Here, for instance, the majority did not compare the "relevant environment"—interrogation by a Border Patrol agent in a caged transport vehicle—to that of the "coercive pressures" of the station house in *Miranda*. *Howes*, 565 U.S. at 509. Instead, it considered this environment *only* to find that the agent adhered to "[p]ermissible aspects of a *Terry* stop at the border." *Singh*, 2024 WL 1477401, at *2.

This Court did not obfuscate or hide the ball in *Howes*—it set forth a straightforward two-step test for determining whether an individual is in custody for *Miranda* purposes. Despite having more than a decade to adopt and apply this test, three courts of appeals are ignoring it—in fact, the Ninth Circuit in *Cabrera* issued a published opinion that further entrenched its arbitrary approach. This Court should grant certiorari to bring the Eighth, Ninth, and Tenth Circuits in line with the other nine courts of appeals that faithfully apply *Howes*.

II.

This case presents an important and recurring constitutional issue.

By definition, every *Miranda* analysis requires judges, prosecutors, and defense attorneys to make a threshold determination of whether there was "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). Not surprisingly, this question arises daily in a variety of interrogation contexts, such as prisons, *Maryland v. Shatzer*, 559 U.S. 98 (2010), schools, *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), police stations, *Thompson v. Keohane*, 516 U.S. 99 (1995), private homes, *Beckwith v. United States*, 425 U.S. 341 (1976), and traffic stops, *Berkemer*, 468 U.S. 420. Apart from the Fourth Amendment, it is hard to imagine a more frequently-implicated constitutional protection in criminal cases.

Not only does this inquiry occupy the minds of judges and lawyers *after* criminal charges arise, it affects police officers who must make "in-the-moment judgments as to when to administer *Miranda* warnings." *J.D.B.*, 564 U.S. at 271. Not surprisingly, such officers often have "difficulty deciding exactly when a suspect has been taken into custody." *Berkemer*, 468 U.S. at 441. Accordingly, one of the Court's goals in creating an objective custody test was to "give clear guidance to the police." *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004). But when three circuit courts encompassing 22 states—i.e., nearly the entire population west of the Mississippi River—decline to follow even the guidance this Court *has* issued, it is no

wonder police struggle to make "in-the-moment judgments as to when to administer *Miranda* warnings." *J.D.B.*, 564 U.S. at 271.

When police are confused as to the rule for determining custody, this confusion clogs trial and appellate courts with pretrial motions, direct appeals, and habeas challenges. Many challenges could be easily avoided if all circuits simply took note of and implemented this Court's holdings. Thus, this case presents a recurring and important issue that the Court should resolve.

III.

Mr. Singh's case is an excellent vehicle to correct this oversight and provide guidance on applying *Howes*' second step.

Mr. Singh's case is an ideal vehicle to correct the approaches of the Eighth, Ninth, and Tenth Circuits, for several reasons.

First, the issue of custody was thoroughly raised and decided below. At the trial level, Mr. Singh moved to suppress his statements on *Miranda* grounds and argued that his formal arrest and other arrest-like conditions rendered him "in custody" for *Miranda* purposes. On appeal, the majority affirmed, issuing an opinion that focused primarily on the *Miranda* issue and resolved it under *Cabreras*'s border-specific test. Thus, this case presents a clean, preserved record with *Miranda* custody at the forefront.

Second, the majority applied the wrong test. Under *Howes*, the first step of a custodial determination is to decide whether "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave" in light of the "location of the questioning," its "duration," the "statements made," any use of

"physical restraints," and whether the person is released "at the end of the questioning." *Howes*, 565 U.S. at 509. If the answer is no, the second step is to decide "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.*

But here, the Ninth Circuit did neither. Instead, it considered whether Mr. Singh's seizure "constituted a permissible *Terry* stop, or something more." *Singh*, 2024 WL 1477401, at *2 (quoting *Cabrera*, 83 F.4th at 734). That is an entirely different inquiry than *Howes* requires.

Finally, this case presents an opportunity for the Court to make clear that *both* prongs of the custody analysis apply equally at the border. This Court uses a disjunctive test to decide whether a person is in custody. "In determining whether an individual [is] in custody" for purposes of *Miranda*, "the ultimate inquiry is simply whether there [is] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Stansbury v. California*, 511 U.S. 318, 322 (1994) (simplified). That means that the suspect can be in custody "*either* as part of a 'formal arrest' *or* as part of a less formal 'restraint on freedom of movement of the degree associated with a formal arrest.'" *United States v. Coutchavlis*, 260 F.3d 1149, 1157 (9th Cir. 2001) (emphasis added).

Howes primarily addressed the latter prong of the disjunctive test, instructing courts on how to determine whether the circumstances create the same degree of pressure as a formal arrest. And as Judge Fletcher's dissent suggests, Mr. Singh had a strong claim to custody under that prong, *Singh*, 2024 WL

1477401, at *2–3 (Fletcher, J., dissenting)—a claim that the majority entirely ignored due to its reliance on *Cabrera*. *Id.* at *2 (majority opinion).

But *Howes* also alluded to the formal-arrest prong. In asking "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*," *Howes* instructed considered whether the detention was similar to "the paradigmatic *Miranda* situation—a person is *arrested* in his home or on the street and whisked to a police station for questioning." 565 U.S. at 511 (emphasis added); *see also id.* (considering how a suspect feels "[w]hen [they are] *arrested* and taken to a station house for interrogation" (emphasis added)). This is in line with the standard *Miranda* inquiry asking whether the suspect was under arrest, either de facto or de jure. *See Stansbury*, 511 U.S. at 322.

Here, however, the majority built on *Cabrera*'s error by extending its logic even to circumstances where the person is actually, formally arrested. The record in this case was replete with evidence of formal arrest: Agent Fulton testified explicitly that Mr. Singh was under arrest when he made his adoptive admission. At that time, Agent Fulton was actively filling out the form that Border Patrol uses to document formal arrests. Per his testimony, that "record of arrest" records "the area where someone was arrested," "other people involved in the arrest," "what technology assisted in the arrest," and "manner of arrest." In response to a Fourth Amendment motion, the prosecutor argued, and the magistrate judge agreed, that Mr. Singh's passport was seized incident to arrest. And the magistrate judge

ultimately ruled that no Fifth Amendment violation had occurred because "an agent can ask, 'What is your citizenship?' to someone who is arrested right at the border." As demonstrated by her reference to Mr. Singh's "arrest[] right at the border," she rejected Mr. Singh's claim not because of a failure of arrest evidence, but because she believed *Miranda* did not apply at the border.

That should have been dispositive. This Court has already made clear in *Berkemer v. McCarty*, 468 U.S. 420 (1984)—a traffic stop case relied upon in *Howes*, 565 U.S. at 509–10—that the "formal arrest" prong of the custody analysis applies equally to *Terry* stops. The state in *Berkemer* asked the Court to rule that formal arrest did not trigger *Miranda* custody: "When the police *arrest* a person for allegedly committing a misdemeanor traffic offense and then ask him questions without telling him his constitutional rights, . . . his responses should be admissible against him." *Id*. at 429 (emphasis added). This Court disagreed. The Court explained that since *Miranda*'s inception, police have followed a bright-line rule that formal arrest triggers the obligation to give *Miranda* warnings. *Id*. at 429–30. Creating an exception for misdemeanor traffic stops would undermine the "clarity of the rule." *Id*. at 430.

The Court therefore decided to "[a]dhere[] to the principle that *all* suspects must be given such warnings." *Id*. (emphasis added). "[A] person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in *Miranda*, regardless of the nature or severity of the offense of which he is suspected or for which he was arrested." *Id*.

By sidestepping the custody analysis entirely, the majority failed to apply this bright-line rule to an unambiguous formal arrest. *Singh*, 2024 WL 1477401, at *2. And contrary to *Berkemer*, it did so because of the "nature . . . of the offense of which he [was] suspected," namely, illegally crossing the border. *Id*. This case therefore provides this Court the opportunity not only to bring the Eighth, Ninth, and Tenth Circuits into alignment with *Howe*'s test for de facto arrests, but also to clarify that both aspects of the custody test apply at the border.

IV.

This Court should bring the Eighth, Ninth, and Tenth Circuits in line with its precedent.

It goes without saying that courts of appeals do not have discretion to ignore this Court's precedent. Given that nine circuit courts have adopted *Howes*' two-step test, it was not buried in the decision or hidden to the average jurist. Yet three courts of appeals have simply failed to apply it for more than a decade, creating an unnecessary and unjustified circuit split. Because it would take little for this Court to bring all circuit courts into alignment, this Court should grant the petition for certiorari.

CONCLUSION

For these reasons, this Court should grant Mr. Singh's petition for a writ of certiorari.

Respectfully submitted,

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s/ Katie Hurrelbrink

KATIE HURRELBRINK
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467

Attorneys for Petitioner