

IN THE SUPREME COURT OF THE UNITED STATES

BUTA SINGH, 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

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QUESTION PRESENTED

Whether petitioner was "in custody" for purposes of Miranda v. Arizona, 384 U.S. 436 (1966), when U.S. Border Patrol agents initially detained him near the U.S.-Mexico border and asked for his biographical information.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (9th Cir.):

United States v. Singh, No. 20-50245 (Apr. 5, 2024)

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

United States v. Singh, No. 19-cr-3623 (Sept. 11, 2020)

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No. 24-5722

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-9) is not published in the Federal Reporter but is available at 2024 WL 2764818. The order of the district court affirming the magistrate judge's conviction and judgment is not published in the Federal Reporter but is available at 2020 WL 5500232.

JURISDICTION

The judgment of the court of appeals was entered on April 5, 2024. A petition for rehearing was denied on July 3, 2024. The

petition for a writ of certiorari was filed on October 1, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Southern District of California, petitioner was convicted on one count of attempting improper entry into the United States, in violation of 8 U.S.C. 1325. Judgment 1. He was sentenced to time served. Id. at 2. The court of appeals affirmed. Pet. App. 1-5.

1. Border Patrol agents saw a group of individuals entering the United States by crossing a canal on a raft. C.A. E.R. 3. Agents subsequently found petitioner and another person hiding in the bushes in the area. Id. at 4. An agent handcuffed petitioner and two others and brought them to a vehicle, where another agent removed their handcuffs "and placed them in [the] vehicle to obtain their biographical information and determine whether to arrest them." Ibid. The agent then asked them for their documents, and petitioner handed over his passport after he saw the others doing so. Ibid. The agent opened the passport and wrote down petitioner's biographical information before returning the document to him. Ibid.

Petitioner was charged with attempted illegal entry in violation of 8 U.S.C. 1325, a misdemeanor charge. C.A. E.R. 5. Petitioner was subsequently tried before a magistrate judge, who admitted the third page of petitioner's passport into evidence.

Id. at 6. The magistrate judge also admitted two other documents that it found "sufficient to establish alienage," namely, petitioner's visa application and his consulate certification. Ibid. (citation omitted). After admitting that evidence and hearing testimony from various witnesses, the magistrate judge found petitioner guilty of misdemeanor attempted illegal entry. Id. at 7.

2. The district court affirmed the magistrate judge's decision. C.A. E.R. 7. It rejected petitioner's challenge to the admission of the third page of his passport, finding, inter alia, that the document had not been introduced in violation of Miranda v. Arizona, 384 U.S. 436 (1966), because petitioner was not in custody when he gave the Border Patrol agent his passport. Id. at 16. The court observed, inter alia, that petitioner was not singled out for border-related detention and that the agent who asked for petitioner's documents had removed petitioner's handcuffs beforehand. Id. at 18. The court accordingly found that petitioner was placed in the vehicle "to obtain biographical information," and that the agent "had not yet determined [petitioner's] citizenship and was still investigating" when he asked for the passport, and that the circumstances "did not result in custodial interrogation necessitating Miranda warnings." Ibid.

In a footnote, the district court rejected petitioner's assertion that the government was estopped, based on its arguments

on a Fourth Amendment search issue, from arguing that petitioner was not in custody. C.A. E.R. 17 n.3.

2. The court of appeals affirmed in an unpublished, memorandum disposition. Pet. App. 1-5. Citing United States v. Cabrera, 83 F.4th 729 (9th Cir. 2023), the court explained that it would "consider 'whether the detention constituted a permissible Terry stop'" -- a reference to Terry v. Ohio, 392 U.S. 1 (1968), which recognizes the permissibility of investigatory detention on reasonable suspicion of criminal activity -- "'or something more.'" Pet. App. 4 (quoting Cabrera, 83 F.4th at 734). And like the district court, the court of appeals found that because petitioner was detained "at night, in a remote location" and because petitioner "was apprehended with other people," his having been handcuffed while he was escorted to the Border Patrol truck did "not turn this relatively brief Terry stop at the border into an arrest," and "the agents did not need to advise [petitioner] of his Miranda rights before asking him for identification." Id. at 4-5.

The court of appeals further determined that "even assuming" the district court erred, "any error was harmless." Pet. App. 5. The court observed that the district court had "found that the visa application with the certificate of authenticity, was 'sufficient to establish alienage.'" Ibid. And the court of appeals determined that the visa application with petitioner's photo on it, combined with the fact that he was found hiding in

the bushes shortly after entering the United States on a raft, were "sufficient to establish that [petitioner] was not a citizen."

Ibid.

Judge Fletcher dissented. Pet. App. 6-8. In his view, the facts of this case were meaningfully distinct from those in which the circuit had affirmed un-Mirandized statements at the border as part of a permissible Terry stop, and he did not view the error as harmless. Id. at 6-7.

ARGUMENT

Petitioner contends (Pet. 8-21) that this Court should grant certiorari to clarify its holding in Howes v. Fields, 565 U.S. 499 (2012), regarding when a person is "in custody" for purposes of Miranda v. Arizona, 384 U.S. 436 (1966). The court of appeals' unpublished memorandum decision in this case is correct and does not conflict with any decision of this Court or of another court of appeals. This Court recently denied a petition for a writ of certiorari raising a similar claim, see Cabrera v. United States, 144 S. Ct. 2634 (2024) (No. 23-6976), and the same course is warranted here.¹

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).

¹ A similar issue is also raised in United States v. Campos-Ayala, No. 24-5501, (pet. for cert. filed Sept. 5, 2024).

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, 565 U.S. at 508-509.

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 citation omitted). "Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last." Ibid. This 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.

Applying that test, this Court held in Berkemer v. McCarty, 468 U.S. 420 (1984), that a traffic stop does not necessarily constitute custody for purposes of Miranda. 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.

2. In its unpublished memorandum opinion in this case, the court of appeals correctly affirmed the district court's rejection of petitioner's motion to suppress the admission of one page of his passport, which petitioner provided to Border Patrol agents after he was stopped near the border and before he received Miranda warnings. See Pet. App. 3-5.

The court of appeals explained that, under its recent decision in Cabrera, the question was "'whether the detention constituted a permissible Terry stop or something more.'" Pet. App. 4 (quoting Cabrera, 83 F.4th at 734). And the court found that because petitioner was detained "at night, in a remote location" and "was apprehended with other people," his having been handcuffed during the walk to the Border Patrol truck did "not turn this relatively brief Terry stop at the border into an arrest." Id. at 4-5.

Petitioner identifies no decision -- from this Court or another court of appeals -- requiring the issuance of Miranda warnings on comparable facts. And petitioner errs in contending (Pet. 13-15) that the court of appeals deviated from the two-step

inquiry described in Howes v. Fields, supra. As explained on pages 8 and 9 of the government's brief in opposition to the petition for a writ of certiorari in Cabrera v. United States, supra (No. 23-6976), the court of appeals' analysis was not materially different from the one Howes prescribes.² Petitioner further errs in asserting that the decision below implicates division in the courts of appeals regarding "[w]hether courts must apply the second step of Howes to determine if a person is 'in custody' for Miranda purposes." Pet. prefix; see id. at 10-15. As explained on pages 10 through 12 of the government's brief in opposition in Cabrera, supra, no disagreement exists and petitioner's contrary contention rests on a misreading of Howes.³ The Court denied certiorari in Cabrera, 144 S. Ct. 2634, and should do the same here.

3. At all events, this case would not be an appropriate vehicle for addressing the question presented because the court of appeals additionally found, in the alternative, that the district court's admission of one page of petitioner's passport was harmless. Petitioner was convicted after a bench trial of a

² The government has served petitioner with a copy of its brief in Cabrera, which is also available on this Court's online docket.

³ While Judge Fletcher dissented in this case, his dissent did not concern the question regarding the proper interpretation of Howes on which petitioner seeks review. See Pet. App. 6-7. Instead, Judge Fletcher disagreed with the majority's factbound determinations that the circumstances of petitioner's detention constituted a Terry stop and that any error was harmless. Ibid.

misdemeanor violation of 8 U.S.C. 1325, which bars improper entry by a noncitizen. Pet. App. 1. The court of appeals explained that the other trial evidence -- namely, the circumstances of how petitioner was found and an authenticated copy of his visa application -- were sufficient to establish that petitioner was a noncitizen, even without the passport evidence. See id. at 5. Because petitioner has not challenged that alternative finding in this Court, see Pet. prefix, a decision in his favor on the question presented would have no practical effect on his conviction. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties). The petition for a writ of certiorari should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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