No. 09-1443

JUN 23 2010

IN THE

Supreme Court of the United States

CHARLES L. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,
Petitioner,

vs.

JOHNATHAN ANDREW DOODY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I.

A. Whether the Court of Appeals correctly applied settled principles when it ruled that *Miranda* warnings given to a juvenile did not clearly inform him of his *Miranda* rights where the detective downplayed the significance of the warnings, and, in explaining the right to counsel's presence, told the juvenile that that right would apply if the juvenile was involved in a crime.

B. Whether the Court of Appeals correctly applied settled principles in ruling that the state court's determination that the warnings given to the juvenile advised him of his *Miranda* rights in a clear and understandable manner was an unreasonable application of federal law, as determined by this Court, and rested on an unreasonable determination of the facts in light of the state court record.

II.

A. Whether the Court of Appeals correctly applied settled principles when it ruled that a confession was involuntary where it was obtained through the custodial interrogation of a legally inexperienced juvenile from Thailand that began at night and lasted nearly 13 hours, and which was conducted by tag teams of Task Force officers, without significant breaks, while the juvenile sat in a straight backed chair, and received no food and just two soft drinks; where the tape recordings of the interrogation establish that the juvenile was subjected to relentless questioning, including over long periods of time when he

was silent and nonresponsive, and was told repeatedly that he had to answer his interrogators' questions, that the interrogation would continue until he did, and that his answers would not leave the room.

B. Whether the Court of Appeals correctly applied settled principles when it ruled that the state court's determination that the confession was voluntary was an unreasonable application of federal law, as determined by this Court, and rested on unreasonable determinations of the facts in light of the state court record.

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INTRODUCTION

Respondent Johnathan Doody respectfully opposes the request by the Petitioner [hereinafter "State" or "Arizona"] that certiorari be granted in this matter. The Petition itself shows the *absence* of any good, let alone compelling, reason for the granting of discretionary review; the Petition reflects only dissatisfaction with the Ninth Circuit's disposition of the matter. The State's argument that the Ninth Circuit "disregarded" the AEDPA rests on a distortion of the record and misstatement of the basis of the Ninth Circuit's ruling.

STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals (en banc), after careful consideration, determined that Doody was entitled to habeas corpus relief under the AEDPA, on two separate Constitutional grounds, each one under both 28 U.S.C. § 2254(d)(1) and § 2254(d)(2). A panel of the Ninth Circuit, and then the Ninth Circuit en banc, ruled that under the facts of this particular interrogation, Doody's confession was involuntary. This sleep-deprived juvenile's will was overborne by his indefatigable interrogators during an interrogation that lasted over 12 hours without food or significant breaks; the contrary determination by the Arizona Court of Appeals was both an unreasonable application of federal law, as determined by this Court, and rested on multiple unreasonable determinations of fact.

The Ninth Circuit en banc also ruled that Johnathan Doody was not given proper *Miranda* warnings and that the State court's determination that the warnings were clear and understandable constituted

both an unreasonable determination of the facts and an unreasonable application of clearly established federal law. The Court reached these conclusions only after listening to audiotapes of the entire interrogation, which began at 9:25 pm on October 25, 1991 and ended at 10 am the next day. Those tapes included the purported advisement of *Miranda* rights.

In reaching these conclusions, the Ninth Circuit did not "disregard" the AEDPA, but carefully applied it. Its determination that the *Miranda* warnings given were improper and inadequate was entirely consistent with this Court's recent decision in *Florida v. Powell*, 130 S.Ct. 1195 (2010); with this Court's seminal *Miranda* ruling; and with *California v. Prysock*, 453 U.S. 355 (1981); and *Duckworth v. Eagan*, 492 U.S. 195 (1989), which re-affirm that the warnings given must reasonably convey the defendant's rights as required by *Miranda*.

Likewise, the Ninth Circuit did not disregard the AEDPA in ruling that Doody's statements were involuntary, and that the State court's contrary determination was unreasonable, both as a matter of law and fact. It did not "mischaracter[ize] the state court record, redetermin[e] witness credibility, [or] draw[ ] inferences adverse to the states [sic] courts' legal and factual determinations." Petition at i. As demonstrated below, the Petition's contrary claims misstate and mischaracterize the record on these scores.

Arizona's "Questions Presented" section is both misleading and argumentative, and violates Supreme Court Rule 14.(1)(a). Its first sentence asserts as fact that "Johnathan Doody killed eight Buddhist monks and a nun at a Buddhist temple near Phoenix[,] Arizona

in 1991", Petition at i, even though the jury found Doody guilty of felony murder, and rejected the State's claim that he was the actual shooter. Though Alex Garcia, the State's cooperating witness, testified that Doody hatched a plan to kill the monks and that Doody was the shooter, the jury disbelieved Garcia's testimony and did not find Doody guilty of the intentional murders that Garcia described.

In summation, the prosecutor argued that Doody's confession alone was sufficient to establish felony murder; other than Doody's confession, there was only slight and vigorously contested circumstantial evidence that he had any involvement at all.

But, this case was rife with false confessions. At the time of Doody's interrogation, the State had already indicted four men – "the Tucson Four" – for the Temple murders based on *their* confessions to the crimes. Though Doody's interrogators succeeded in getting Doody to agree that the Tucson men were involved, the State thereafter dropped the charges against those adults, taking the position that, notwithstanding their own confessions, they had no involvement at all. The State's case depends on the notion that some of what Doody told his interrogators was both voluntary and reliable, even though his statements inculpating the Tucson men were false and, plainly, coerced.

The State studiously ignores that one of the reasons coerced confessions are excluded is their *unreliability*. Juveniles, like Doody, are *particularly* vulnerable to coercion, and *particularly* likely to make statements that are not true. It ignores that just this Term, in *Graham v. Florida*, ___ S.Ct. ___, 2010 WL 1946731 (2010), this Court re-affirmed what it had

recognized in *Roper v. Simmons*, 543 U.S. 551 (2005): minors are "more vulnerable" than adults to "outside pressures." *Graham v. Florida*, 2010 WL 1946731, *13. "[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id.*

Thus the premise from which the State begins its Petition to this Court – that Johnathan Doody killed nine Buddhists at a Buddhist Temple – is flawed. So, too, is the remainder of the State's argument for certiorari.

REASONS FOR DENYING THE WRIT

In this unusual and extreme case, the federal Court of Appeals properly concluded that the State court's ruling that the juvenile confession was voluntary rested on an unreasonable determination of the facts and constituted an unreasonable application of the law. Review by this Court is not necessary to address the well-settled law governing the voluntariness of juvenile confessions, nor the AEDPA standards that apply when a defendant seeks habeas relief from a state court conviction based on a coerced juvenile confession.

Though the State tries to lump this case with other cases in which this Court reversed Ninth Circuit grants of habeas, in this case, the Ninth Circuit did not misunderstand or ignore its responsibilities under AEDPA. It did not re-weigh evidence or improperly make its own factual determinations where it was obligated to defer to the State's.

On the contrary, fully recognizing the deference that must be paid to state court determinations and the

narrow circumstances in which habeas relief is appropriate under the AEDPA, the Court of Appeals determined that, in this unusual case, in two separate ways, the State had violated Doody's clearly established Constitutional rights, and that the State court's contrary legal and factual determinations were not only wrong, but unreasonable. Federal judges *follow* the AEDPA mandate, *uphold* the Constitution they are sworn to uphold, and *serve* the interests of federalism when they grant relief in those cases where the AEDPA standards are met.

Implicit in Arizona's argument is the view that any determination by a federal court that a legal or factual conclusion by a State court is unreasonable in fact constitutes a forbidden re-weighing of the facts, a proscribed re-evaluation of the State court record, an inappropriate encroachment on the State's prerogatives, and an insult to the dignity of State courts. That view of the AEDPA is incorrect.

As we demonstrate below, the majority's analytical approach and its conclusion were fully respectful of the State court, and appropriately implemented this Court's Constitutional and AEDPA jurisprudence. A grant of certiorari in this unusual case would be a misuse of this Court's valuable and limited resources and would not address any new or unresolved issues.

I. The Federal Court Properly Applied Well-Settled AEDPA Standards in Granting Relief Because Proper *Miranda* Warnings Were Not Given

The *Miranda* warnings Doody was given were not the crisp, straightforward warnings this Court recently quoted in *Berghuis v. Thompkins*, __ S.Ct. __, 2010 WL 2160784, *4 (2010). It took Detective Riley 14 pages of transcript just to give them. *See* A-4-7; A-35-36.

Although Doody was a Thai-born, legally inexperienced juvenile who said he had never even heard of *Miranda* warnings, Detective Riley's words downplayed their seriousness and obscured their importance. Four times, Detective Riley misrepresented the purpose of the warnings, telling Doody that this was something "to save time," "to save you some time," "to get you back to doing what you need to do," and to "get things squared away." Twice Detective Riley told Doody not to "take it out of context," which, in this context, could only have meant that Doody should not take the warnings too seriously. According to Detective Riley, "it's a little more, little less ah technical and a little less heavy..."; it was just "kind of a formal thing that we have to do."

With respect to the right to counsel, purporting to explain the printed warning on the State's juvenile *Miranda* form, Detective Riley told Doody:

> [A]n attorney is a lawyer who will speak for you and help you concerning the crime or any kind of offense that ah we think that you or somebody else is involved in, *if you were involved in it, okay.* Again, it [sic] not

> necessarily mean that you are involved, *but if you were, then that's what that would apply to okay.*

Arizona did not even defend these warnings on the merits in the State court. And, in the en banc argument before the Ninth Circuit, Arizona's attorney acknowledged that what Doody was told was not clear.

Seeking certiorari review, Arizona now argues that the Ninth Circuit majority and concurrence "myopically focused upon the above-quoted statement, instead of the context in which it was made." Petition at 27. But, to evaluate whether warnings are correct and "reasonably convey[ed] to [the suspect] his rights as required by *Miranda*," *Powell*, 130 S.Ct. at 1204, quoting *Eagan*, 492 U.S. at 203, it is essential to consider what the officer actually said. And, here, as Judge Kozinski put it in concurring, because there exists a tape recording, one can actually hear "the officer's *Miranda* warnings fly off the rails." (A-83)

This occurred with respect to the *critical* right to counsel warning, though "the right to have counsel present at the interrogation is indispensable to the Fifth Amendment privilege under the system we delineate today." *Miranda v. Arizona*, 384 U.S. 436, 469 (1966). A clear and accurate warning about the right to have counsel present is *particularly* important where minors are concerned, because juveniles "have limited understandings of the criminal justice system and the roles of the institutional actors within it." *Graham v. Florida, supra*, 2010 WL 1946731, *20. Thus, it is *Arizona,* not the federal court, that ignores the *context* of these warnings.

In attacking the Ninth Circuit's decision, the Petition relies heavily on the dissent written by Judge Tallman, but Judge Kozinski's concurrence demonstrates why Judge Tallman was wrong.

> The dissent tells us that the state court's characterization of the officer's words was not unreasonable because the officer might have meant to "reinforce that Doody was 'faced with a phase of the adversary system.'" Dissent at 3039-40 (quoting *Miranda*, 384 U.S. at 469). I'm not entirely sure what this means, and I certainly don't see anything so benign lurking in the officer's words. ... The officer did say something about the adversary system: That a lawyer will help you "if you were involved" in criminal activity, and that the right to an attorney only applies to you if "you were involved." This of course is not true: The innocent no less than the guilty, are entitled to a lawyer. (A-84-85)

Yet, under the "explanation" Detective Riley gave to Doody, invoking the right would itself be an acknowledgment that Doody was involved in criminal activity.

Judge Kozinski's opinion also made clear why the dissent's view of AEDPA's application *to this case* was wrong.

> The dissent offers a number of other arguments for denying relief, even if the warnings weren't "clear," "understandable" or "appropriate. *See* Dissent at 3039-41.

> Our dissenting colleagues appear to believe that AEDPA deference requires us to indulge every possible justification for the state court opinion, whether or not the argument is consistent with what the state court actually held. But we know that's not the case. *See Rompilla v. Beard*, 545 U.S. 374, 390 (2005) .... What deference requires is paying attention to what the state courts actually have to say. We defer when state courts reasonably adjudicate claims of federal rights, even if we think they're wrong. But if the state courts don't act reasonably, deference comes to an end. We certainly aren't required to defer to justifications that the state courts themselves did not consider.
>
> Perhaps, as the dissent suggests, the officer's words could be "construed as having no effect on Doody's understanding of his right to counsel." Dissent at 3039. Maybe Doody wasn't listening to what the officer said, or maybe he didn't believe it. Of course, that's not what the state court said. Even if it were, it's entirely irrelevant. *Miranda* establishes an objective test. We can't uphold defective warnings because they might have been inadvertently successful, just as we can't disregard a properly administered warning because a particular suspect might have misunderstood. (A-88)

The Ninth Circuit decision is fully consistent with *Florida v. Powell*, 130 S.Ct. 1195 (2010). The

warnings given to the adult, Powell, satisfied the Constitutional standard, but the warning in this case – which told Doody that the right to an attorney applied *if he had committed the crime* – was different. As Judge Kozinski noted, even his dissenting colleagues admitted that the officer's words "could be construed" to say you only get a lawyer if you're guilty, which is flat out wrong. A-85. Thus, on this basis alone, the warnings given to Doody did not "reasonably convey" Doody's rights as required by *Miranda.*

The Ninth Circuit ruled, alternatively, that the warnings were defective because they obscured and minimized the warnings' significance. In arguing that the Ninth Circuit erred, the Petition misstates what the en banc majority held. The Ninth Circuit did not determine that the State court's determination was unreasonable because Riley downplayed the warnings' significance *"by telling Doody that the police did not necessarily suspect him of having committed a crime."* Petition at 23 (emphasis added). The Court of Appeals concluded that the officers improperly downplayed the warnings' importance because, as the tape-recording and transcript establish, "During the administration of the warnings, Detective Riley emphasized that Doody should not "take them out of context," and implied to a juvenile, who had never heard of *Miranda,* that the warnings were just formalities." (A-36)

As Doody has argued in connection with his claim that his confession was involuntary, this was not the only time when Doody's interrogators conveyed a message at odds with *Miranda* and the Constitutional rights it safeguards. In the course of the interrogation, contradicting the warning that what Doody said could and would be used against him, the officers falsely told

him that what he said would stay in that room. ("What you tell us right now is gonna stay right here." "Johnathan, we're not even gonna go out and be telling everyone what you're saying that's not the way we do business." "We're in a room, you're not in court, you need to come clean with us on this." "We're gonna protect this, this stuff.")

Contradicting the warning that Doody had an absolute right to remain silent which he could exercise at any time, his interrogators repeatedly said and implied that he had to talk to them. ("You just have to open up," "had to open up," "have to clear yourself," "have to help us," "have to tell us," "have to get rid of it," "have to do it.") The thrust of the entire interrogation was that Doody had to tell the officers what they wanted to know, and that the questioning would continue until he did. ("I'm gonna stay here until I get an answer;" "We're gonna sit here and have to go through this thing ... your (sic) not telling the truth ...")

These statements to Doody by his interrogators were made hours into the interrogation, long after the original *Miranda* warnings were given. Because people – and teenagers in particular – are likely to be affected most by that which they most recently heard, whether or not the officers' subsequent statements are relevant to whether Doody was properly Mirandized, they are relevant to the voluntariness or involuntariness of Doody's confession, the subject to which we turn now.

II. The Federal Court Properly Applied Well-Settled AEDPA Standards in Granting Relief Because Respondent's Confession Was Involuntary

The Ninth Circuit's disposition of Doody's involuntariness claim was likewise correct, and raises no certworthy issue. The en banc majority, and the panel which had unanimously reached the same conclusion, carefully considered the AEDPA standards before concluding that Arizona's voluntariness determination was not just wrong under the applicable Constitutional standard, but unreasonable.

Arizona asserts that the en banc majority "seized upon three alleged 'unreasonable determination' (sic) of the 'facts' mentioned by the Arizona Court of Appeals in its voluntariness analysis." Petition at 32. By placing the word "facts" in quotation marks, it suggests that these are not factual determinations at all. It further asserts that these "facts" – Arizona's quotation marks – are "not of significant consequence to the Arizona Court of Appeals' overall determination of voluntariness." Petition at 33. Arizona's argument is specious.

Though Arizona has called this "nit-picking" and argues that the Ninth Circuit ignored the AEDPA, the Ninth Circuit's analysis – and its focus upon the particular State court findings upon which the State court based its decision – is precisely what Section 2254(d)(2) requires. The facts that the Ninth Circuit determined were unreasonably found were not random or insignificant; they were the foundation of the State court's ruling that the confession was not involuntary.

The Arizona Court of Appeals acknowledged the "troublesome length" of Doody's 12-hour plus overnight interrogation, but stated: "Each of the officers involved ... testified at the suppression hearing that Doody remained alert and responsive throughout the interrogation and did not appear overtired or distraught. Our review of the audio tapes confirms the officers' testimony." (C-10) In the State court's view, this somehow neutralized the "troublesome" fact that Doody's interrogation lasted so long.

However, and as the Ninth Circuit majority concluded, *the state record shows that not a single one of Doody's interrogators testified that Doody remained alert throughout the interrogation.* The State has never pointed to a shred of testimony that shows otherwise.

Moreover, not a single officer testified that Doody remained *responsive* throughout the interview, and the tapes themselves show conclusively that he did not. They show that Doody was completely *unresponsive* for many, long periods of time. (A-51-53) Accordingly, as the Ninth Circuit majority concluded, it was also unreasonable for the Arizona Court of Appeals to conclude that there "is no evidence that calls into question the testimony that Doody remained alert and responsive." (A-31) Not only was there no such testimony to begin with, but the tapes themselves are evidence that shows – as might be expected – that Doody was *neither* alert nor responsive throughout the long night of interrogation.

The Arizona Court, in discounting the "troublesome" length of the interrogation, also relied on

the "fact"[1] that, although the interview lasted nearly thirteen hours, after about two and a half hours of questioning, "Doody admitted he had borrowed Caratachea's rifle [the murder weapon] at the time of the temple murders." But this, too, as the Ninth Circuit majority shows, was an unreasonable factual finding for it was a misstatement of the record. Two and a half hours into the interrogation, Doody acknowledged that he had borrowed the rifle a month *before* the Temple crimes, not at the time of those events. (See A-57) Doody's first admission to any involvement occurred after more than *six* hours of intense questioning.

Similarly, the Arizona Court of Appeals' conclusion that the lengthy interview was not coercive rests on the supposed "courteous, almost pleading style of questioning [employed] during most of the interview." In fact, though, the tapes memorialize hours of questioning that is insistent and commanding, and not "pleading" or "courteous" at all.

> [T]he audiotapes demonstrate that the detectives' relentless and uninterrupted interrogation of an unresponsive juvenile was far from "courteous". Instead the detectives continuously demanded, over and over without a response from Doody, answers to their questions. ... Although the detectives sometimes couched their questions in "pleading" language, their tones were far from pleasant, varying from pleading to scolding to sarcastic to demeaning to demanding. Regardless of

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[1] *We* use quotation marks here because the supposed "fact" is contrary to the record.

> tone, over twelve hours of insistent questioning of a juvenile by tag teams of two, three and four detectives became menacing and coercive rather than "courteous"... Any doubt regarding this matter is easily resolved by listening to the audiotapes. At times, the tones of the detectives are downright chilling. (A-54)

At one point, the officers were yelling so loudly that their voices were picked up on the tape recording of the interrogation of *Garcia*, which was being conducted in another room.

The State court's conclusion that Doody's confession was voluntary was an incorrect and unreasonable application of this Court's jurisprudence on the subject. *See Dickerson v. United States*, 530 U.S. 428, 434 (2000)(in determining voluntariness, court "examines whether a defendant's will was overborne by the circumstances surrounding the giving of a confession...The due process test takes into consideration 'the totality of the surrounding circumstances – both the characteristics of the accused and the details of the interrogation'"); *Reck v. Pate*, 367 U.S. 433, 440 (1961)("all the circumstances attendant upon the confession must be taken into account"); *Gallegos v. Colorado*, 370 U.S. 49, 52 (1962)("application of these principles involves close scrutiny of the facts of individual cases"); *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993)("length of the interrogation ... its location ... its continuity"); *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973)("[I]f his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process."); *In re Gault*, 387 U.S. 1, 45 (1967)("admissions and

confessions of juveniles require special caution"); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948)("Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest.").

As the Ninth Circuit majority wrote:

> The audiotapes of Doody's interrogation are dispositive in this case, as we are not consigned to an evaluation of a cold record, or limited to reliance on the detectives' testimony. We can readily discern from the audiotapes an extraordinarily lengthy interrogation of a sleep-deprived and unresponsive juvenile under relentless questioning for nearly thirteen hours by a tag team of detectives, without the presence of an attorney, and without the protections of proper Miranda warnings. The intensive and lengthy questioning was compounded by Doody's lack of prior involvement in the criminal justice system, his lack of familiarity with the concept of *Miranda* warnings, and the staging of his questioning in a straight-back chair, without even a table to lean on. None of these considerations were even mentioned by the Arizona Court of Appeals. (A-44-45)

CONCLUSION

In this unusual and extreme case, the grant of federal habeas corpus relief was not only permitted by the AEDPA but compelled by it. The case raises no new or unresolved issues. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: June 22, 2010

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