No. 08-196

In The Supreme Court of the United States

STATE OF NEW MEXICO,

Petitioner,

vs.

ROGER SNELL,

Respondent.

On Petition For Writ Of Certiorari To The New Mexico Court Of Appeals

REPLY BRIEF FOR THE STATE OF NEW MEXICO

GARY K. KING
Attorney General of New Mexico

JAMES W. GRAYSON
Assistant Attorney General
Counsel of Record

STEVEN S SUTTLE
Special Counsel

MARGARET ELIZABETH MCLEAN
Assistant Attorney General

111 Lomas Boulevard NW, Suite 300
Albuquerque, New Mexico 87102
(505) 222-9000

Counsel for Petitioner

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QUESTION PRESENTED

Are *Miranda* warnings required when an officer engages in routine questioning at an accident scene while briefly detaining a motorist in a patrol car?

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REPLY TO BRIEF IN OPPOSITION

This case provides an opportunity to clarify the relationship between the Fourth and Fifth Amendments to the United States Constitution and resolve an ambiguity in the application of *Miranda* that has resulted in a substantial and intolerable split among the circuits and state courts of last resort. In his brief in opposition, Mr. Snell advances two basic arguments against this Court's review. He first claims the applicable law is settled and the dispute in this case is merely factual. He next claims that there is no split in authority concerning the interpretation of *Berkemer v. McCarty*, 468 U.S. 420 (1984). Neither argument can survive scrutiny. The petition for certiorari presents a controlling question of law: Does *Miranda* apply to routine questioning during police-citizen encounters that do not rise to the level of a de facto arrest under the Fourth Amendment? Courts are deeply divided in answering this question of law and in analyzing *Berkemer*, thereby creating disparate results in the application of *Miranda* based on legal principles, not on facts. The compelling reasons advanced in the petition warrant review of this important and unresolved question.

I. The reach of *Miranda* and the proper meaning of *Berkemer* is a question of law.

Respondent argues this case is governed by its facts. The New Mexico Court of Appeals' opinion shows otherwise. In order to determine whether

Mr. Snell was in custody, the court applied the legal standard defining an investigatory detention under the Fourth Amendment. Pet. App. 7 ("A suspect is in custody for the purpose of *Miranda* if a reasonable person in his position would believe he was not free to leave the scene of the interrogation."). This legal standard was critical to the court's holding that Mr. Snell was in custody. Pet. App. 12 ("[H]ere there are additional factors that would have caused a reasonable person in Defendant's position to believe that he was not free to leave. . . . "), 14 ("[T]he police did not invite Defendant to join them or make clear that the confinement in their car was at his discretion."); *accord* Br. Opp'n 13-14 (defining custody by reference to *United States v. Mendenhall,* 446 U.S. 544 (1980)). Had the New Mexico court applied the de facto arrest standard to the question of custody, it would have had no choice but to reach a different result. *See State v. Werner*, 871 P.2d 971, 974 (N.M. 1994) (observing that a "detention in a patrol car does not constitute an arrest per se" and concluding, under *Terry v. Ohio*, 392 U.S. 1 (1968) and *United States v. Sharpe*, 470 U.S. 675 (1985), that a detention was transformed into a de facto arrest only after holding the defendant in a patrol car for forty-five minutes).

The petition presents the facts as relied on by the lower courts (Pet. 22) and thus does not raise a factual dispute. Mr. Snell attempts to inject a factual dispute by contending that he was the only suspect in a felony investigation. Br. Opp'n 6. This contention, however, is not supported by the record and did not

form a basis for the New Mexico court's ruling. Pet. App. 10-15. In New Mexico, the crime of homicide by vehicle requires proof of either intoxication or reckless driving; poor driving or even careless driving will not suffice. *State v. Yarborough*, 930 P.2d 131, 138-40 (N.M. 1996). When the officers arrived at the scene of the accident on snow-packed roads, and even after discovering a fatality, they had no reason to assume a criminal act had occurred, much less associate Mr. Snell with such an assumption. It was Mr. Snell's actions after the officers' arrival that changed the nature of the encounter. When he interfered with their preliminary gathering of information, he gave them no choice other than to separate him from other witnesses. In what was at most a *Terry* encounter, the officers detained Mr. Snell at that time by placing him in a patrol car for approximately five minutes. Tr. at 39. Even then, however, they did not detain him for the purpose of interrogation about any suspected criminal conduct. The officers had no basis upon which to arrest Mr. Snell until he admitted to a speed that could be considered excessive for the weather and road conditions. In fact, the officers never placed him under arrest that night; rather, they took him to a motel.

Respondent also asserts that custody can be demonstrated by psychological restraints. Br. Opp'n 13. Again, however, there is no evidence of any psychological restraint in this case, and the New Mexico Court of Appeals did not rely on such a factor in finding custody. Officers informed Mr. Snell they were

placing him in the patrol car in order to prevent him from interfering with their interview of another witness, and he therefore had no reason to believe that his detention was connected to the questioning or that the "questioning [would] continue until he provide[d] his interrogators the answers they [sought]." *Berkemer*, 468 U.S. at 438.

Respondent contends that the New Mexico court relied on "the totality of factual circumstances." Br. Opp'n 16. Aside from a conditional threat of future arrest for interference, the only facts he can advance in support of the ruling amount to nothing more than artificially dividing a single act – placing an individual in a patrol car prior to routine questioning – into its constituent parts. *See* Br. Opp'n 16 (stating that he was "physically escorted to the police car, left alone in the locked police car, and was unable to leave the police car when being questioned by the police"). Mr. Snell does, however, make an important point in noting that the present case did not involve a traffic stop. Br. Opp'n 6-7. The officers arrived at the scene in response to an accident. Their interaction with Mr. Snell did not begin, as a traffic stop would, in a confrontational manner. No matter how one views the facts in this case, the New Mexico Court of Appeals' requirement of warnings represents a significant expansion of *Miranda* and *Berkemer* beyond the arrest context.

Respondent correctly states that it is settled that custody means a formal arrest or its "functional equivalent." *Berkemer*, 468 U.S. at 440 (expressly

noting the settled nature of this rule). What the brief in opposition fails to appreciate is the recognized ambiguity in this legal standard. Some courts rely on the Fourth Amendment de facto arrest standard as the functional equivalent of arrest, *e.g.*, *United States v. Trueber*, 238 F.3d 79, 92-95 (1st Cir. 2001), while others have expressly rejected this standard in favor of separate meanings for "the functional equivalent of arrest" depending on whether the Fourth or the Fifth Amendment is at issue, *e.g.*, *United States v. Newton*, 369 F.3d 659, 673-77 (2d Cir. 2004).

As Mr. Snell observes (Br. Opp'n 8), *Berkemer* contemplated that "the police and lower courts will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody." 468 U.S. at 441. Factual variation is inevitable, and no rule can be expected to anticipate every factual scenario. But *Berkemer* does not contemplate multiple legal definitions of custody. Under this Court's precedent, no court could reasonably conclude that placing an individual in a patrol car, or using handcuffs, inherently transforms an investigatory detention into a de facto arrest under the Fourth Amendment. *See Muehler v. Mena*, 544 U.S. 93, 99-101 (2005) (concluding the use of handcuffs did not exceed the proper scope of a detention); *Bennett v. City of Eastpointe*, 410 F.3d 810, 837 (6th Cir. 2005) ("[N]o circuit has concluded that detention in the back of a police car automatically turns a *Terry* stop into an arrest. . . . "). Yet, based on seeming ambiguities in *Berkemer*, many courts have made just this leap in interpreting the

meaning of arrest under the Fifth Amendment. *E.g.*, *Newton*, 369 F.3d at 676 (handcuffs); *State v. Washington*, 410 S.E.2d 55 (N.C. 1991) (patrol car). This is not a tolerable disparity in facts; rather, it is a fundamental disagreement on the law. A question of this nature is appropriately subject to this Court's review in order to unify precedent, provide effective direction to law enforcement, and guide lower courts on the meaning of legal principles. *See New York v. Quarles*, 467 U.S. 649, 658 (1984) ("At least in part to preserve its clarity, we have over the years refused to sanction attempts to expand our *Miranda* holding."); *cf. Ornelas v. United States*, 517 U.S. 690, 697 (1996) (adopting de novo review for determinations of probable cause and reasonable suspicion).

II. An intractable conflict in the application of *Miranda* and the recurring and widespread nature of the problem warrants review of this important question of federal law.

Notwithstanding Respondent's claim to the contrary (Br. Opp'n 11-12, 14-15), courts are indeed divided on the legal meaning of arrest for purposes of applying *Miranda*'s requirement of custody. Respondent relies heavily on *United States v. Martinez*, 462 F.3d 903 (8th Cir. 2006), *cert. denied*, 127 S. Ct. 1502 (2007). Br. Opp'n 9-11. The Eighth Circuit determined that using handcuffs and detaining the defendant in a patrol car did not transform an investigatory detention into a de facto arrest under

the Fourth Amendment. *Id.* at 908; *accord Newton*, 369 F.3d at 673 ("[I]f the sole issue before us were the Fourth Amendment reasonableness of Newton's initial seizure, we would not hesitate to rule in favor of the government."). Nevertheless, stating that this is a "separate question" from the custodial requirement of *Miranda*, the *Martinez* court relied on *Berkemer* to conclude that these facts created the functional equivalent of arrest for purposes of the Fifth Amendment. 462 F.3d at 908-10. The dissenting judge, however, observed that the use of handcuffs may simply "be an action reasonably limited to officer safety concerns or the risk of flight while the officers attempt to quickly confirm or dispel their suspicions." *Id*. at 913 (Loken, C.J., dissenting in part and concurring in judgment). Unlike the majority's focus on handcuffs, Chief Judge Loken would have focused instead on "the nature of the questioning." *Id*.

Although the majority's view in *Martinez* follows the position of a number of circuits, *see Newton*, 369 F.3d at 673 (adopting the position of the Seventh, Ninth, and Tenth Circuits), other circuits apply the Fourth Amendment de facto arrest standard to determine custody. *United States v. Elston*, 479 F.3d 314, 319-20 (4th Cir.), *cert. denied*, 127 S. Ct. 2151 (2007); *Trueber*, 238 F.3d at 92-93. This split represents a doctrinal disagreement, and it has resulted in different holdings on similar facts. *Compare Newton*, 369 F.3d at 676, *with Elston*, 479 F.3d at 319-20. Despite percolation of this issue for the twenty-four

years since *Berkemer* was decided, it has yet to be resolved without this Court's intervention.

Respondent, relying only on States that would support a finding of custody (Br. Opp'n 14-16), contends that the New Mexico ruling does not conflict with the decisions of courts of last resort in other jurisdictions.[1] *See also State v. Twohig*, 469 N.W.2d 344, 355 (Neb. 1991) (holding that questioning in a police cruiser was custodial because the defendant was not free to leave). However, he overlooks the greater number of cases holding that placing a motorist in a patrol car does not by itself constitute *Miranda* custody. In addition to the five state courts of last resort cited in the petition for this proposition, see *Wilson v. State*, 983 P.2d 448, 463-64 (Okla. Crim. App. 1998), and see also *United States v. Manbeck*, 744 F.2d 360, 379 (4th Cir. 1984), in which the court stated that "*Miranda* warnings are not required simply because one is questioned in a police car."

Respondent directs the Court's attention to factual distinctions between this case and *United States v. Jones*, 523 F.3d 1235 (10th Cir. 2008). Br. Opp'n 12-13. As noted in the petition (Pet. 18), however, it is the Tenth Circuit's analytical focus on the length and nature of questioning that distinguishes

[1] Respondent acknowledges that the present case involves a matter of federal law. Br. Opp'n 14. The conflict among States on this federal question is a proper subject for certiorari review. *See* Sup. Ct. R. 10(b).

Jones from the New Mexico Court of Appeals' opinion. This aspect of *Jones* is faithful to *Berkemer*. *See* 468 U.S. at 442 & n.36 (noting that "a single police officer asked respondent a modest number of questions" and citing a case involving "*persistent* questioning in the squad car") (emphasis added).[2]

The critical importance of the length and nature of questioning, a factor absent from the lower court's opinion in this case, is illustrated by *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), in which this Court confronted the analogous issue of whether an individual must be warned of the right to refuse consent during an investigatory detention. *Miranda* did not require such advice because the concerns expressed in *Miranda* "are simply inapplicable" outside the "inherently coercive" environment of an arrest. *Id.* at 246-47. "*Miranda*, of course, did not reach investigative questioning of a person not in custody, . . . and it assuredly did not indicate that such questioning ought to be deemed inherently coercive." *Id.* at 247.

The State of New Mexico is arguing neither that there must be a formal arrest nor that custody cannot

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[2] This Court's citation of *United States v. Schultz*, 442 F. Supp. 176 (D. Md. 1977), although cautiously qualified by reference to the length and nature of questioning at issue, may have the potential to create more confusion on the question presented in the petition. *See Schultz*, 442 F. Supp. at 181 (stating, in direct conflict with *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977), that "'[c]ustodial interrogation' certainly includes all station-house or police-car questioning initiated by the police").

occur in a patrol car. *See Quarles*, 467 U.S. at 651-52, 655 (finding custody of an individual who was handcuffed and surrounded by four officers when all that remained was a formal announcement of arrest); *Rhode Island v. Innis*, 446 U.S. 291, 298 (1980) (recognizing that a suspect was in custody after being formally arrested and placed in a patrol car). The State further understands that any confession must be voluntary in order to be admissible. However, "the failure to provide *Miranda* warnings in and of itself does not render a confession involuntary. . . ." *Quarles*, 467 U.S. at 655 n.5. *Miranda* established a special prophylactic rule, albeit one of constitutional magnitude, designed to prevent involuntary confessions and to supplement the totality of circumstances test for voluntariness based on a "presum[ption] that interrogation in certain custodial circumstances is inherently coercive." *Id.* at 654 (footnote omitted). When a police-citizen encounter is not inherently coercive, the traditional test for voluntariness adequately protects Fifth Amendment rights. During an investigatory detention, "[t]here is no reason to believe . . . that the response to a policeman's question is presumptively coerced; and there is, therefore, no reason to reject the traditional test for determining the voluntariness of a person's response." *Schneckloth*, 412 U.S. at 247.

Respondent contends no harm would result from expanding *Miranda* here because it would require only "simple procedures." Br. Opp'n 17. He believes officers should either provide warnings even in the

absence of arrest or, despite legitimate reasons for the place of detention, give motorists the option of declining to sit in a patrol car. *Id.* at 16-17. *Berkemer* itself, however, recognizes that an overly broad application of *Miranda* "would substantially impede the enforcement of the Nation's traffic laws – by compelling the police either to take the time to warn all detained motorists of their constitutional rights or to forgo use of self-incriminating statements made by those motorists – while doing little to protect citizens' Fifth Amendment rights." 468 U.S. at 441. For similar reasons, this Court has consistently endeavored to "reduce[ ] the impact of the *Miranda* rule on legitimate law enforcement while reaffirming the decision's core ruling." *Dickerson v. United States*, 530 U.S. 428, 443 (2000). Because the facts in this case "cannot fairly be characterized as the functional equivalent of formal arrest," *Berkemer*, 468 U.S. at 442, the New Mexico Court of Appeals' opinion threatens legitimate law enforcement activity while in no way advancing *Miranda*'s core ruling. The opinion should therefore be reversed.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

GARY K. KING
Attorney General of New Mexico

JAMES W. GRAYSON
Assistant Attorney General
Counsel of Record

STEVEN S SUTTLE
Special Counsel

MARGARET ELIZABETH MCLEAN
Assistant Attorney General

111 Lomas Boulevard Northwest,
Suite 300
Albuquerque, New Mexico 87102
(505) 222-9000

Counsel for Petitioner

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