No. 09-11121

IN THE

Supreme Court of the United States

J.D.B.,

Petitioner,

v.

NORTH CAROLINA

Respondent.

On Writ of Certiorari to the Supreme Court of North Carolina

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, the National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit corporation with membership of more than 10,000 attorneys and 28,000 affiliate members in all fifty states. The American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

Since its founding more than 50 years ago, NACDL has worked to ensure justice and due process for persons accused of crime or wrongdoing, and to preserve and promote a fair and rational criminal justice system. *Amicus curiae* writes to advance these objectives in the context of legal determinations of when an individual is "in custody" under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and its progeny. The important issue raised in this case presents the opportunity for this Court to announce a rule that not only is consistent with its prior decisions, but which also provides meaningful guidance to law enforcement officials and promotes a fair and rational criminal justice system. The appropriate rule to serve all of these goals is one confirming that, where at the time of questioning the interrogating officer knows the age of the person being questioned, a court may consider that age in a *Miranda* custody analysis

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1 Pursuant to Rule 37.6, counsel for *amicus* states that no counsel for a party authored this brief in whole or in part and no person, other than *amicus*, its members, or its counsel made a monetary contribution to the preparation of this brief. Pursuant to Supreme Court Rule 37.2(a), *amicus curiae* certifies that on November 29 and November 30, 2010, counsel of record for Respondent and Petitioner respectively consented to the filing of *amicus curiae* briefs, in support of either party or of neither party.

as it evaluates the totality of the circumstances and determines whether a reasonable person in the individual's position would have felt he or she was free to terminate the police questioning and leave.

SUMMARY OF THE ARGUMENT

The age of a person is an objective fact that, when known by the interrogating officer, is a circumstance of the interrogation that a court may properly consider in a *Miranda* custody analysis. In *Yarborough* v. *Alvarado*, 541 U.S. 652 (2004), this Court held that the state court did not "unreasonably apply . . . clearly established Federal law" by neglecting to consider Alvarado's age[2] explicitly in its *Miranda* custody analysis. In so holding, the Court expressly left open the question whether a court *may* consider age—and, if so, under what circumstances. Consistent with *Miranda* and its progeny, including *Alvarado*, *amicus curiae* NACDL respectfully urges this Court to confirm in this case that age, like other factual circumstances that comprise an interrogation environment, may be properly considered by a court as part of the "totality of circumstances" for purposes of the *Miranda* custody test when that fact is known by both parties to the interrogation.

Permitting a court to consider age, when known, as part of the *Miranda* custody test does not convert the analysis into a subjective test. In order to be relevant

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2 Notably, the question presented in *Alvarado* raised the issue of the suspect's "age and experience"—not age alone. Although "age and experience" are conflated in various parts of the Court's opinion in *Alvarado*, the reasoning of the majority, concurring, and dissenting opinions in that case each included reasoning directed specifically at age alone and not "age and experience."

to the "custody" analysis, a factor under consideration must be an "objective fact," not a "subjective experience" that "depend[s] on the actual mindset of a particular suspect." See *Alvarado*, 541 U.S. at 667-68. The age of the person being questioned, when known to the interrogating officer, is not a "subjective experience" or a matter subject to debate or interpretation. When an objective fact—including the age of the person being questioned—is known to the interrogating officers, they need not engage in guesswork about the person's particular "frailties or idiosyncrasies." See *Berkemer* v. *McCarty,* 468 U.S. 420, 442 n.35 (1984). Although interrogating officers (and courts) will have to assess the relative impact and significance of age in the context of all other objective circumstances, this is no different—and no less "objective"—than the analysis for any other circumstance this Court has upheld as appropriately considered under the *Miranda* custody test, such as the length or location of the interrogation. Also like any other objective fact, age will not be dispositive. It may not even be significant in some cases, as in *Alvarado*, depending upon the particular facts. That said, the objective exercise of applying a reasonable person standard necessitates an evaluation of "*all* of the circumstances surrounding the interrogation," *Stansbury* v. *California*, 511 U.S. 318, 322 (1994) (per curiam) (emphasis added), in order for the court to "determine what it would have been like for a reasonable man to be in the suspect's shoes," *Thompson* v. *Keohane*, 516 U.S. 99, 119 (1995) (Thomas, J., dissenting). To the extent that the age of the interviewee is known to the questioner and may materially affect whether a reasonable person in the position of the interviewee would view himself as free to leave, that objective fact should not be

excluded from the custody inquiry. Cf. *United States* v. *Arvizu*, 534 U.S. 266, 274-75 (2002) (criticizing lower court's removal of certain factors from its analysis under a "totality of the circumstances" test).

The *Alvarado* majority noted that "[t]here is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience"—such as, for example, the voluntariness of confessions. 541 U.S. at 667. But the fact that the inquiries are conceptually distinct does not mean that age is irrelevant in the "custody" context. For example, this Court has already recognized a number of factors, such as the location and length of the interrogation, as being relevant both to the voluntariness inquiry that assesses the suspect's state of mind as well as the custody analysis that is based upon a reasonable person standard. See, *e.g.*, *Gallegos* v. *Colorado*, 370 U.S. 49, 52-53, 54, 55 (1962) (noting relevance of the length of questioning in voluntariness analysis); *In re Gault*, 387 U.S. 1, 53, 54 (1967) (in context of voluntariness analysis, noting instances where interviewee was "placed in the police station" and where statements were "made at police headquarters"); *Alvarado*, 541 U.S. at 664-65 (noting as relevant factors in custody test that questioning took place "at the police station" and that "[t]he interview lasted two hours, four times longer than the 30-minute interview in *Mathiason*"); *Mathiason* v. *Oregon*, 429 U.S. 492, 495-96 (1977) (location of interrogation is relevant to custody test, albeit not dispositive); *id.* at 495 (noting as relevant to custody test the fact that interview lasted half an hour).

Certain common factors are inherent in the interactions between law enforcement officers and

suspects, and these factors, when present and known to both parties, will inform any determination based upon the totality of the circumstances. The age of a suspect, like the location or length of the questioning, is one of the objective facts that (when known to the interrogating officer) should inform a court's decision whether the interrogation was custodial, in addition to informing a court's decision whether any statement made was voluntary. To the extent an individual's age affects a reasonable and objective view of whether that person would have felt he or she was not free to leave under the circumstances of the case, the age of the individual should not be ignored.

Considering age as part of the custody inquiry does not impose any impractical or inappropriate burdens on law enforcement and is consistent with *Miranda*'s policy goal to provide clear guidelines to law enforcement. Conversely, a holding that the suspect's age is *never* relevant to the custody analysis could put officers in the odd position of having to ignore certain facts about the suspect that would have bearing on the interrogation environment. In this case, the interrogating officer was specially trained in juvenile law enforcement and was well aware of the juvenile suspect's age. The officer chose the child's middle school as the site of an interrogation regarding a non-school incident and conducted the interrogation during school hours in a closed conference room, without contacting the child's guardian. In these circumstances, a rule permitting a court to consider the juvenile's age as part of the custody inquiry would not complicate the analysis of or place undue burdens upon the police. Such a rule simply allows a court to account for the knowledge of the interrogation scene that an officer and suspect both have, consistent with this Court's precedents.

ARGUMENT

I. THE AGE OF A PERSON BEING QUESTIONED BY THE POLICE MAY, CONSISTENT WITH *MIRANDA* AND *ALVARADO*, BE PART OF THE CUSTODY ANALYSIS

The age of a person is an objective fact that, when known to the interrogating officer, is a circumstance that properly may be considered in a *Miranda* custody analysis. A holding that a court *may* consider the age of the person in question is consistent with this Court's decisions in *Miranda* and its progeny, including *Yarborough* v. *Alvarado*, 541 U.S. 652 (2004).

It is well established that, in determining whether a reasonable person in the position of the interviewee would have felt that he or she was at liberty to terminate the questioning, a court should look to the totality of the circumstances in assessing the interrogation environment. See, *e.g.*, *Stansbury*, 511 U.S. at 322 ("In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation[.]"), quoted in *Alvarado*, 541 U.S. at 663 (discussing "clearly established law" with respect to the custody inquiry). *Alvarado* left open the question whether the age of the person being interrogated may be one of the objective circumstances considered. None of the three opinions in *Alvarado* suggested that age is *never* relevant to the custody test.[3]

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3 As noted by the Petitioner, *see* Pet. Br. at 24, four members of the Court in *Alvarado* opined that age "*could* be viewed as creating a subjective inquiry[,]" 541 U.S. at 668 (emphasis added); one Justice opined that "[t]here may be cases in which a

This Court in *Alvarado* held only that, under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the state court had not "unreasonably applied clearly established Federal law" when it failed to consider explicitly Alvarado's age in its finding that Alvarado was not "in custody" for *Miranda* purposes. By so holding, the Court rejected the court of appeals' determination that "clearly established Federal law" *required* a court to consider age in applying the *Miranda* custody test and that failure to do so was "unreasonable" in Alvarado's case.[4] See 541 U.S. at 666 ("Our opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less *mandated* its consideration." (emphasis added)).

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suspect's age will be relevant to the *Miranda* 'custody inquiry,'" *id.* at 669 (O'Connor, J., concurring); and four Justices opined that "youth is an objective circumstance . . . . it is not a special quality, but rather a widely shared characteristic that generates commonsense conclusions about behavior and perception[,]" *id.* at 674 (Breyer, J., dissenting).

4 The facts of 17-and-a-half-year-old Alvarado's case were in many ways quite different from the facts presented here in 13-year-old J.D.B.'s case. See Pet. Br. at 1-9. In addition to being far younger at the time of questioning than Alvarado, J.D.B. was, among other facts, removed from class for questioning at school during school hours, with no notification to his guardian prior to the interrogation. *Id.* Further, unlike Alvarado, whom the questioning officer "did not threaten or suggest he would be placed under arrest," *Alvarado*, 541 U.S. at 664, J.D.B. was told that "this thing is going to court" no matter what and was threatened with the prospect of a "secure custody order"—an order that, as noted in the decision below, the investigator explained to J.D.B. would give law enforcement the right to hold J.D.B. in juvenile detention even before a court proceeding, see *In the Matter of J.D.B.*, 686 S.E.2d 135, 144 & n.4 (N.C. 2009) (Brady, J., dissenting).

The Court's decision emphasized the deferential standard to which it was required to adhere and the narrowness of its holding. "We cannot grant relief under AEDPA by conducting our own independent inquiry into whether the state court was correct as a *de novo* matter." *Id.* at 665. Indeed, the Court noted, incorrect decisions can still be "reasonable" applications of "clearly established federal law." See *id.* ("'[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the state-court decision applied [the law] incorrectly.'" (quoting *Woodford* v. *Visciotti*, 537 U.S. 19, 24-25) (2002) (per curiam))). This is not an AEDPA case, and the Court now has an opportunity to decide the "de novo" question that was at issue—but not decided by this Court—in *Alvarado.*

In its efforts to argue that age can *never* be a factor in a *Miranda* custody analysis, Respondent seizes on the *Alvarado* majority's statement that "the custody inquiry states an objective rule designed to give clear guidance to the police, while consideration of a suspect's individual characteristics—including his age—could be viewed as creating a subjective inquiry." 541 U.S. at 668. But that is not part of the holding in *Alvarado*, nor does it represent a conclusion that an objective fact such as the age of a suspect always *would* (or, for that matter, ever *should*) be viewed as creating a subjective inquiry. See *id.* at 675 (Breyer, J., dissenting) ("[T]he majority makes no real argument at all explaining *why* any court would believe that the objective fact of a suspect's age could *never* be relevant."); *id.* at 669 (O'Connor, J., concurring) ("There may be cases in which a suspect's age will be relevant to the 'custody' inquiry under *Miranda*[.]").

By contrast, the majority opinion in *Alvarado* clearly did reject the court of appeals' consideration of "Alvarado's prior history with law enforcement" as part of the custody inquiry. According to the Court, consideration of the suspect's interrogation history "was improper not only under the deferential standard of 28 U.S.C. § 2254(d)(1), but also as a *de novo* matter." *Id.* at 668. The court noted that, "[i]n most cases, police officers will not know a suspect's interrogation history." *Id.* (citing *Berkemer*, 468 U.S. at 430-31). Thus, *Alvarado* clearly left open the question of whether the age of a suspect may be considered in the custody inquiry as one of the "objective circumstances that are known to both the officer and the suspect." See *id.* at 674 (Breyer, J., dissenting) ("In the present context . . . of *Miranda*'s 'in custody' inquiry, the law has introduced the concept of a 'reasonable person' to avoid judicial inquiry into subjective states of mind, and to focus the inquiry instead upon objective circumstances that are known to both the officer and the suspect and that are likely relevant to the way a person would understand his situation."). The age of the person interacting with the police is precisely the type of objective circumstance that should inform the custody decision.

Under the totality of the circumstances analysis, the age of a suspect may or may not be relevant, depending upon whether age is, from the attendant facts and circumstances, either something actually known by the officer or a fact that any reasonable officer would have known—as here when the officer conducts an interrogation at a middle school.[5] As

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5 The officer in this case was a juvenile officer who also testified that he had actual knowledge of J.D.B.'s age because it

this Court has held in an analogous context, "[a]n officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned." *Stansbury*, 511 U.S. at 325 (stating that an officer's belief that the person being interrogated is a suspect is "relevant only to the extent it would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action" (internal quotation marks omitted)).

So, too, with the age of the person being interrogated. Like the interrogating officer's beliefs as to whether the person is a suspect, age (arguably a more "objective" fact than an officer's disclosed belief[6]) may be relevant to the totality of the circumstances if it is a fact that is communicated or known to both parties. Accord *Alvarado*, 541 U.S. at 665 ("Counsel for Alvarado alleges that Alvarado's parents asked to be present at the interview but were rebuffed, a fact that—*if known to Alvarado*—might reasonably have led someone in Alvarado's position to feel more restricted than otherwise." (emphasis added)); *Stansbury*, 511 U.S. at 324-25; *Beckwith* v. *United States*, 425 U.S. 341, 347 (1976) (finding irrelevant for purposes of the *Miranda* custody test that police knew prior to the start of the interview

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was provided in school records that the officer reviewed prior to the interrogation. See Pet. Br. at 2-3, 26-27.

6 *See Stansbury*, 511 U.S. at 324-25 ("It is well settled, then, that a police officer's *subjective* view that the individual under questioning is a suspect, *if undisclosed*, does not bear upon the question whether the individual is in custody for purposes of *Miranda*"—but "*may* bear upon the custody issue if . . . conveyed, by word or deed, to the individual being questioned." (emphases added)).

that the suspect was the "focus" of the investigation, where this fact was not disclosed to the suspect).

II. PERMITTING A COURT TO CONSIDER AGE, WHEN KNOWN, AS PART OF THE *MIRANDA* CUSTODY TEST DOES NOT CONVERT THE ANALYSIS INTO A SUBJECTIVE TEST

A rule that allows but does not require a juvenile's age to be considered when applying the *Miranda* custody test would not convert this objective test into a subjective one. In order to be relevant to the "custody" analysis, a factor under consideration must be an "objective fact," not a "subjective experience" that "depend[s] on the actual mindset of a particular suspect." See *Alvarado*, 541 U.S. at 667-68. "To be sure, the line between permissible objective facts and impermissible subjective experiences can be indistinct in some cases." *Id.* at 667. But the age of the person being questioned—when known to the interrogating officer—is not a "subjective experience" or a matter subject to debate or differences in interpretation. Age is instead an objective fact that provides relevant information about "the suspect's position" and how a reasonable person in the position of the person being questioned "would have understood his situation." See *Alvarado* at 674 (Breyer, J., dissenting).

When an objective fact—including the age of the person being questioned—is known to the interrogating officers, they need not "divine" any information or engage in guesswork about the person's particular "frailties or idiosyncrasies." See *Berkemer,* 468 U.S. at 442 n.35. Although interrogating officers (and courts) will have to assess the relative impact and significance of age in the

context of all other objective circumstances, this is no different—and no less "objective"—than the analysis for any other factor or circumstance this Court has considered under the *Miranda* custody test.

For example, the Court has held that the length of interrogation is an objective fact that is relevant to the custody determination. See, *e.g.*, *Alvarado*, 541 U.S. at 665; *Berkemer*, 468 U.S. at 436-39. But the length of the interrogation is not a standard that can be applied mechanically and without reference to the other relevant facts and circumstances. A relatively lengthy interrogation that occurs in a public place may be less likely to cause a person being questioned to perceive that he or she was not free to terminate the questioning and leave than relatively short questioning behind a closed and locked door. Compare *Orozco* v. *Texas*, 394 U.S. 324 (1969) (holding that brief interrogation behind closed doors, in suspect's home, was custodial), with *Berkemer*, 468 U.S. 420 (holding that "persons temporarily detained" pursuant to "ordinary traffic stops," which are typically brief and public, "are not 'in custody' for the purposes of Miranda," but that such stops may become custodial if prolonged), cited in *Pennsylvania* v. *Bruder*, 488 U.S. 9, 11 & n.2 (1988) (noting "*Berkemer*'s rule" that "ordinary traffic stops" are not custodial, but that a motorist "could be found to have been placed in custody for purposes of *Miranda*" in cases of a "traffic stop that involves prolonged detention").

There is no ready formula to determine when an interrogation becomes too long and therefore is determined to be sufficiently coercive to amount to what a reasonable person would view as a "custodial" interrogation. This determination always will

depend upon the totality of the particular facts of the case. Yet that has not prevented this Court from acknowledging the relevance, for purposes of the *Miranda* custody test, of how brief or prolonged an interrogation was. See, *e.g.*, *Alvarado*, 541 U.S. at 665 ("The interview lasted two hours, four times longer than the 30-minute interview in *Mathiason*."); *Bruder*, 488 U.S. at 11 & n.2; *Berkemer*, 468 U.S. at 437-39; *Mathiason*, 429 U.S. at 495.

The Court also has looked to the location of the interrogation as being relevant to the custody analysis. All else being equal, a "stationhouse" interview typically is viewed as more "coercive" than an interrogation that happens in public or in the suspect's home. See, *e.g.*, *Berkemer*, 468 U.S. at 438-39 (noting that "questioning incident to an ordinary traffic stop," typically brief and public, "is quite different from a stationhouse interrogation, which frequently is prolonged" and "police dominated") (citing *Miranda*, 384 U.S. at 451)); see also *Orozco*, 394 U.S. at 326 ("'[C]ompulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery.'" (quoting *Miranda*, 384 U.S. at 461)).

Even so, this Court has held that a "stationhouse" interview can be "noncustodial," see, *e.g.*, *Mathiason*, 429 U.S. at 495, and that an interrogation conducted in a suspect's home or in public can be "custodial." See, *e.g.*, *Orozco*, 394 U.S. 324 (interrogation in suspect's home was custodial); *Bruder*, 488 U.S. 11 n.2 (traffic stops, though public, can be custodial if prolonged). The fact that the application of a particular factor or circumstance—such as the length

or location of the interview—does not automatically translate into a determination of whether a person is or is not in custody does not mean that that factor or circumstance is a subjective one. Nor does it mean that such a factor provides no meaningful guidance to the police or to the courts. See Part IV, *infra*.

The "ultimate determination" in the custody test requires a court to "consider *all* of the circumstances surrounding the interrogation," *Stansbury*, 511 U.S. at 322 (emphasis added), and then put itself "in the suspect's shoes" in order "to determine what it would have been like for a reasonable man to be in the suspect's shoes." *Thompson*, 516 U.S. at 119 (Thomas, J., dissenting); see also *Alvarado*, 541 U.S. at 662 ("[C]ustody must be determined based on how a reasonable person in the suspect's situation would perceive his circumstances."). Within this objective, reasonable person context, the Court has considered, among other factors, whether the interrogation was conducted in private or in public, whether individuals other than law enforcement officers and the suspect were present, and whether the questioning occurred behind a closed and/or locked door. Any of these factors, like age, may have a greater or lesser impact on a particular individual, but, as a general matter, they provide an objective and workable test for how a "reasonable person" would assess the situation from the position of the person being questioned. The fact that the interrogation occurs behind closed doors, for example, is a relevant and objective factor, *Berkemer*, 468 U.S. at 438 (emphasizing the relevance of questioning being "expos[ed] to public view"), because common sense indicates that a closed door would make many feel less "free to go" than a door that is open (or, indeed, a setting with no door at all). Likewise, the fact of the suspect's age, when known to

the officer, is a relevant and objective consideration. The younger the child, the more likely it is that a reasonable person in the suspect's position would not have felt free to get up and leave while being confronted by authority figures. See *Alvarado*, 541 U.S. at 676 (Breyer, J., dissenting) ("Common sense, and an understanding of the law's basic purpose in this area, are enough to make clear that Alvarado's age—an objective, widely shared characteristic about which the police plainly knew—is also relevant to the inquiry.").[7]

Like any other objective fact, age will not be dispositive and may not even be significant in some cases. With respect to any of these relevant factors—including length and location of interrogation—there is no formula that tells law enforcement officials what the weight of a particular factor will be in a court's ultimate custody analysis. The relative weight of any one factor is always dependent upon the other facts and circumstances of the particular case; that is, indeed, the essence of a "totality of the circumstances" test. See, *e.g.*, *Stansbury*, 511 U.S. at 325 ("The weight and pertinence of any communications regarding the officer's degree of suspicion will depend upon the facts and circumstances of [a] particular case.").

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7 See also Pet. Br. at 12-15, 19 (citing precedents of this Court recognizing and holding significant the fundamental differences between juveniles and adults); *id.* at 15-17 (noting examples of state legislatures' widespread recognition of the fundamental differences between juveniles and adults); *id.* at 19-21, 23 (discussing social science studies and evidence from the hard sciences, such as data from MRI examinations, demonstrating fundamental differences between juveniles and adults).

Here, a 13-year-old was questioned in a middle-school conference room with a closed door during school hours, after being pulled out of a seventh-grade classroom and without any consent from or even consultation with his parents or guardians. Under these circumstances, the age of the interviewee (a known fact) may reasonably contribute to the conclusion that he was not free to end the interview and leave. That is a different "totality of circumstances" than, for example, a 17-year-old being interrogated in the food court of a shopping mall. In either case, the age of the person being questioned may be relevant only if it is known to the questioner and only to the extent that it has bearing upon whether a reasonable person in the position of the person being questioned would have felt that he or she was free to terminate the questioning and leave.

Allowing consideration of age will not create a multiplicity of standards. To the contrary, the test would continue to be the same "reasonable person" test that this Court has repeatedly reaffirmed. All that changes is that the age of the individual being questioned may be one of the objective facts comprising the totality of the circumstances for that particular case. Just as the reasonable person standard allows a court to consider whether the interrogation was 20 minutes or one hour or six hours, the reasonable person standard likewise should allow a court to consider whether the person being questioned is 12 years old, 17 years old, or 35 years old.[8]

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8 See also Pet. Br. at 21 (noting other legal contexts in which age is a relevant objective factor that may properly be considered in the analysis). This is not to say that these other inquiries are not conceptually different from the *Miranda*

III. THE FACT THAT AN INDIVIDUAL'S AGE IS RELEVANT WHEN EVALUATING THE VOLUNTARINESS OF A STATEMENT SUPPORTS THE CONCLUSION THAT AGE ALSO SHOULD BE CONSIDERED AS AN OBJECTIVE FACT IN THE CUSTODY ANALYSIS

The majority opinion in *Alvarado* noted that "[t]here is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience." 541 U.S. at 667. More specifically,

> [T]he objective *Miranda* custody inquiry could reasonably be viewed as different from doctrinal tests that depend on the actual mindset of a particular suspect, where we do consider a suspect's age and experience. For example, the voluntariness of a statement is often said to depend on whether the defendant's will was overborne, a question that logically can depend on the characteristics of the accused.

Id. at 667-68 (citations and internal quotation marks omitted). But the fact that the inquiries are conceptually distinct does not mean that age is irrelevant in the "custody" context. The *Alvarado* Court noted that the voluntariness inquiry depends on whether the defendant's will is overborne, whereas the custody test depends on whether the

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custody test—to be sure, they are. Rather, it is only to point out that the consideration of circumstances that vary from case to case, and have varying degrees of weight and significance from case to case, does necessarily convert of an objective test to a subjective one.

interrogation environment is sufficiently coercive that a reasonable person in the suspect's position would feel that he or she was not at liberty to terminate police questioning and leave. See *id.* at 661 ("*Miranda* itself held that preinterrogation warnings are required in the context of custodial interrogations given 'the compulsion inherent in custodial surroundings.'" (quoting *Miranda*, 384 U.S. at 458)). In both cases—but in different ways—the level of coercion is critical to the core inquiry. Under the voluntariness doctrine, the level of coercion (as evidenced by a number of factors) is examined in order to discern the actual mindset of the suspect; under the custody doctrine, the level of coercion (as evidenced by a number of factors), is examined to determine how a reasonable person in the suspect's position would have understood the situation.

A number of factors already are recognized as being relevant both to the voluntariness inquiry as well as the custody analysis. For example, voluntariness inquiries consider the length of the interview and whether the suspect was permitted to take breaks as factors relevant to the question whether "the defendant's will was overborne," thereby rendering an incriminating statement involuntary. See *Alvarado*, 541 U.S. at 668 (discussing legal standard for voluntariness inquiries); *Haley* v. *Ohio*, 332 U.S. 596, 599-600 (1948) (confession of 15-year-old boy violated due process where, among other facts, "police, working in relays, questioned him hour after hour, from midnight until dawn"). Yet this Court has also looked to both of those factors—length of interrogation and whether suspect was permitted to take breaks—in applying the objective "reasonable person" standard under the *Miranda* custody

analysis. See, *e.g.*, *Alvarado*, 541 U.S. at 664 (noting that one "fact[] weigh[ing] against a finding that Alvarado was in custody" was that the police "twice asked Alvarado if he wanted to take a break"); *Berkemer*, 468 U.S. at 438 (recognizing the relevance of brief versus prolonged interrogations); *Mathiason*, 429 U.S. at 495 (noting that the interview lasted only half an hour).

As a matter of common sense, certain factors will influence a determination about the level or coercion inherent in any interrogation—regardless of whether the relevant inquiry is objective (like the custody test) or subjective (like the voluntariness test). Certain common characteristics are inherent in the interactions between law enforcement officers and suspects, and these factors, when present, will inform any decision that is based upon the totality of the circumstances. The age of the suspect, like the length or location of the interrogation, is one of the objective facts that (when known to the interrogating officer) should inform a court's decision whether the interrogation was custodial in addition to informing a court's decision whether any statement made was voluntary. For voluntariness, the suspect's age matters to the extent that it affects whether the suspect's will was overborne. Under the custody test, to the extent an individual's age affects a reasonable and objective view of whether that person would have felt he or she was free to leave under the particular circumstances, the age of the individual should not be ignored. Cf. *Arvizu*, 534 U.S. at 274-75 (noting that lower court's refusal to consider certain factors "does not take into account the 'totality of the circumstances,' as our cases have understood that phrase," and would "seriously undercut the 'totality of the circumstances' principle which governs the

existence *vel non* of 'reasonable suspicion"); *Fare* v. *Michael C.*, 442 U.S. 707, 725 (1979) ("The totality approach permits—indeed, it mandates—inquiry into *all* the circumstances surrounding the interrogation." (emphasis added)).

IV. CONSIDERING AGE AS PART OF THE CUSTODY INQUIRY DOES NOT IMPOSE ANY IMPRACTICAL OR INAPPROPRIATE BURDENS ON LAW ENFORCEMENT AND IS CONSISTENT WITH *MIRANDA*'S POLICY GOAL TO PROVIDE CLEAR GUIDELINES TO LAW ENFORCEMENT

Allowing the courts to consider age as a factor that may be relevant in a *Miranda* custody analysis when known by the interrogating officers would not be unduly burdensome or undermine *Miranda*'s goal "to give clear guidance to the police." See *Alvarado*, 541 U.S. at 668; see also *Berkemer*, 468 U.S. at 430. Nor would it "place upon the police the burden of anticipating the frailties [and] idiosyncrasies of every person whom they question," *People* v. *P.*, 233 N.E.2d 255, 260 (N.Y. 1967), quoted in *Alvarado*, 541 U.S. at 667; *Berkemer*, 468 U.S. at 442 n.35. Conversely, a holding that the suspect's age is *never* relevant to the custody analysis could put officers in the odd position of being able to ignore certain facts about the suspect that would have bearing on the interrogation environment. This Court has noted that "[i]t would be unreasonable to expect the police to make guesses as to the nature of the criminal conduct at issue before deciding how they may interrogate the suspect." *Berkemer*, 468 U.S. at 431. For similar reasons, it would be unreasonable to expect the police to pretend that the suspect is someone he is not, or to ignore known facts about the suspect, particularly

facts that bear upon how a reasonable person in the suspect's position would understand his situation. Indeed, to ignore these known facts for purposes of the "custody" analysis would in some ways *add* complications for law enforcement, given that officers will be held responsible for these facts when courts assess the question whether any statements obtained during the interview were voluntary. See *Gallegos*, 370 U.S. at 52-53 (citing *Haley*, 332 U.S. 596).

The rule that provides clearer guidance is the clean principle—articulated by prior cases of this Court—that a fact known to both parties of an interrogation is relevant to the extent that it may have bearing on whether a reasonable person in the interviewee's position would feel that he or she may terminate the questioning and leave. See *Alvarado*, 541 U.S. at 663 (quoting *Stansbury*, 511 U.S. at 322-23); see also *Arvizu*, 534 U.S. at 275 ("The Court of Appeals' view that it was necessary to 'clearly delimit' an officer's consideration of certain factors to reduce 'troubling . . . uncertainty' also runs counter to our cases and underestimates the usefulness of the reasonable-suspicion [totality of the circumstances] standard in guiding officers in the field. . . . To the extent that a totality of the circumstances approach may render appellate review less circumscribed by precedent than otherwise, it is the nature of the totality rule."); *Fare*, 442 U.S. at 725-26 (noting that "the totality approach will allow the court the necessary flexibility" to "take into account those special concerns that are present when young persons . . . are involved," but will also "refrain[] from imposing rigid restraints on police and courts in dealing with an experienced older juvenile" who may, under the circumstances of a particular case, present fewer "special concerns").

In this case, the officer was specially trained in juvenile law enforcement and was well aware of the juvenile suspect's age before and during the interrogation. The officer chose the child's middle school as the site of an interrogation regarding a non-school incident and conducted the interrogation during school hours, in a closed conference room and without contacting the child's guardian. In these circumstances, a rule permitting a court to consider the juvenile's age as part of the custody inquiry would not complicate the analysis of or place undue burdens upon the police. Such a rule simply allows a court to account for the knowledge of the interrogation scene that an officer and suspect both have, consistent with this Court's precedents.

CONCLUSION

The decision of the North Carolina Supreme Court should be reversed.

Respectfully submitted,

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