No. 08-680

IN THE

Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

vs.

MICHAEL BLAINE SHATZER,

Respondent.

On Writ of Certiorari to the Court of Appeals of Maryland

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the rule of *Edwards* v. *Arizona* (that the police cannot initiate contact and request a *Miranda* waiver from a suspect in custody who has invoked his right to counsel) apply in a case where (1) over two years have elapsed between the prior invocation and the subsequent contact, and (2) the suspect was not in police custody but rather sentenced to state prison for an unrelated offense?

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INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

This case involves the admissibility of a voluntary confession taken with the full warnings and waivers

1. The parties have consented to the filing of this brief.

No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* CJLF made a monetary contribution to its preparation or submission.

required by *Miranda* v. *Arizona*, under circumstances where there is no substantial reason to believe that the suspect was badgered into making the waiver. Exclusion of such reliable evidence of guilt would be contrary to the interests CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

In August 2003, Michael Shatzer was incarcerated in the Maryland Correctional Institution—Hagerstown (MCI-H) for the sexual abuse of a child. *Shatzer* v. *State*, 405 Md. 585, 589, 954 A. 2d 1118, 1120 (2008). The Hagerstown police department was investigating allegations that Shatzer had also sexually abused his three-year-old son. *Ibid*. Shatzer allegedly ordered his son to perform fellatio on him. *Ibid*. The detective assigned to the case, Detective Shane Blankenship, interviewed the son. See Pet. for Cert. 3.

Detective Blankenship then went to MCI-H to interview Shatzer. *Shatzer*, 405 Md., at 589, 954 A. 2d, at 1120. Shatzer initially waived his *Miranda* rights, but later he invoked them and told Detective Blankenship "he would not talk about this case without having an attorney present." *Ibid*. The interview ended, and the police closed their investigation in 2003. *Ibid*.

About two and a half years later, in February 2006, Shatzer's son was "able to make more specific allegations" against his father. *Ibid*. As part of the new investigation, Detective Paul Hoover went to interview Shatzer at the Roxbury Correctional Institution where Shatzer was then incarcerated. 405 Md., at 589-590, 954 A. 2d, at 1120-1121. Shatzer had been incarcerated for the duration of time between his first and second interrogation. *Ibid*. Detective Hoover was aware that Shatzer had been investigated for the sexual abuse of his son before, Pet. for Cert. 4, but no one advised

Detective Hoover that in 2003 Shatzer had asked for an attorney. Pet. for Cert. 5; 405 Md., at 589, n. 1, 954 A. 2d, at 1120, n.1.

Detective Hoover explained that a new investigation into the allegations had begun and advised Shatzer of his *Miranda* rights. 405 Md., at 590, 954 A. 2d, at 1121. Shatzer waived his right to an attorney and his right to remain silent. *Ibid.* He admitted to masturbating in front of his son from a distance of about three feet away. *Ibid.* He denied that fellatio had taken place. *Ibid.* At the end of the interview, Shatzer agreed to undergo a polygraph examination. *Ibid.*

Five days later, Detective Hoover and Detective Shawn Schultz met to administer a polygraph examination. *Ibid.* Shatzer was advised of his *Miranda* rights for a third time, and, once again, he waived his rights. *Ibid.* Detective Schultz concluded that Shatzer had failed the exam. *Ibid.* "Shatzer [then] became emotional, started to cry, and said 'I didn't force him. I didn't force him.' At that time, he requested an attorney and the interview stopped." *Ibid.*

Shatzer moved to suppress the statements made during the two interrogations conducted by Detective Hoover. 405 Md., at 590-591, 954 A. 2d, at 1121. He alleged that his request for an attorney in 2003 prohibited further interrogation, without an attorney, in 2006. *Id.*, at 591, 954 A. 2d, at 1121. The trial court denied the motion, finding that "the length of time [for which Shatzer] was incarcerated" had caused a break in custody. *Ibid.* (quoting trial court opinion). Shatzer waived his right to a jury and agreed to a statement of the facts. *Id.*, at 591, 954 A. 2d, at 1122. He was found guilty of child sexual abuse and sentenced to 15 years, with all but 5 years suspended. *Id.*, at 591-592, 954 A. 2d, at 1122. The court relied on statements made during Shatzer's second interrogation to find guilt. *Id.*,

at 591, n. 3, 954 A. 2d, at 1122, n. 3. The court reasoned that because "[t]here is . . . admission of the defendant as to the act of masturbation. The Court finds that that is exploitation based on the version of events given." *Ibid*.

Shatzer appealed to the Court of Special Appeals, but the Maryland Court of Appeals *sua sponte* granted certiorari to consider whether *Edwards* v. *Arizona*, 451 U. S. 477 (1981), required suppression of Shatzer's statements during his second interrogation. 405 Md., at 592, 954 A. 2d, at 1122. Five Judges of the Court of Appeals found that *Edwards* had been violated, and held "that the passage of time *alone* is insufficient to expire the protections afforded by *Edwards*." *Id*., at 606-607, 954 A. 2d, at 1131. The Court of Appeals also "decline[d] . . . to recognize a 'break in custody' exception to the *Edwards* rule regarding an inmate who is subject to uninterrupted, continuous incarceration between the first invocation of the right to counsel and a second interrogation when the interrogation relates to the same investigation." *Id*., at 618, 954 A. 2d, at 1137. Judges Harrell and Cathell dissented. Writing for the dissent, Judge Harrell relied on both the passage of time and the distinction between police and correctional custody as reasons not to apply *Edwards* to this case. See *id*., at 619-620, 637, 954 A. 2d, at 1139, 1149. This Court granted certiorari on January 26, 2009.

SUMMARY OF ARGUMENT

Precedent does not require this Court to apply *Edwards* to the present case. Extension of *Edwards'* protection is not dictated by precedent and will not prevent the inherently coercive police practices condemned in *Miranda* v. *Arizona,* 384 U. S. 436 (1966), and *Edwards* v. *Arizona*, 451 U. S. 477 (1981). Extend-

ing *Edwards* to the present case will add another layer of prophylaxis to a situation where it is unclear whether there has been a constitutional violation. This Court should mark a clear limit to the reach of *Edwards*' prophylactic rule.

To define the scope of the *Edwards* rule, this Court should consider the limited benefit of extending its presumption to a case where the risk of coercion is remote. In the present case, extending *Edwards*' prophylactic rule would suppress valid confessions without deterring abusive police practices. This is an incorrect result. Extension of the rule cannot be justified when it would reach an incorrect result most of the time.

The correct result can be achieved by adhering to *Edwards* only when adherence furthers the purpose of *Edwards*. At the heart of the *Edwards* rule is the desire to protect the accused from police badgering and compelled self-incrimination. The rule was adopted to strengthen *Miranda*'s protection from compelled self-incrimination in the inherently coercive confines of police custody. As the length of time between two custodial interrogations increases, the reasons to presume that the accused was badgered into a waiver diminishes. Similarly, where the accused has been removed from the custody of his interrogator and is placed in the custody of a state prison, there are few reasons to presume the accused confessed in order to escape from the confines of his interrogator. The *Edwards* presumption should be limited to situations that present a genuine and substantial danger of badgering.

The present case is an example of a situation where that danger is remote. Both of Shatzer's interrogations took place outside of the confines of police custody, and his second interrogation took place two years and seven

months after his first interrogation. Neither interrogation supports a presumption that Shatzer confessed because he believed a confession would remove him from an inherently coercive interrogation or from police custody. This case can be decided either on the basis that the *Edwards* rule is "time-tethered," *United States* v. *Green*, 592 A. 2d 985, 989 (D. C. 1991), cert. dismissed as moot, 507 U. S. 545 (1993), or that *Edwards* does not apply to a suspect held in prison custody.

It is time to establish a specific cut off for *Edwards*' presumption that all confessions obtained in custody are coercive. The presumption has limited courts' ability to achieve justice for the accused and the accuser. This Court's precedent does not require silencing a validly obtained confession simply because more than two years earlier the accused asked for counsel, and he has remained in prison custody since that day. The *Edwards* presumption should be limited, and a valid *Miranda* waiver during the second interview should be sufficient.

ARGUMENT

I. The durational requirement of *Edwards* is an open question not dictated by precedent.

"The issue of whether the passage of time could terminate the protection of *Edwards* remains an open question." *Shatzer* v. *State*, 405 Md. 585, 605, 954 A. 2d 1118, 1130 (2008). On this point, the Court of Appeals could not have said it any better. The issue is before this Court as a matter of first impression. The answer is not dictated by precedent.

The "established rule" of *Edwards* v. *Arizona*, 451 U. S. 477 (1981), does not necessarily apply here. In *Edwards*, the Court was presented with a second

interrogation the next morning, *id*., at 479, and in *Arizona* v. *Roberson*, 486 U. S. 675, 686 (1988), the interval was only three days. Where there has been a long lapse of time between the first and second interrogation, there is less reason to presume police badgering and coercion. Expansion of *Edwards*' bright-line rule into this new territory requires justification. Cf. *id*., at 688 (Kennedy, J., dissenting).

Butler v. *McKellar*, 494 U. S. 407 (1990), instructs that *Edwards* is not an infinitely elastic command that must be applied in every custodial interrogation. Where the facts do not support application of *Edwards*, or where the facts differ significantly, courts are not bound to strict adherence to *Edwards*' precedent.

In *Butler*, this Court considered whether *Roberson* had created a "new rule" for the purpose of the habeas retroactivity limitation of *Teague* v. *Lane*, 489 U. S. 288 (1989). See *Butler*, 494 U. S., at 414-415. This Court rejected Butler's argument that unquestioning adherence to *Edwards* was necessary because the *Roberson* Court "believed Roberson's case to be within the 'logical compass' of *Edwards*." *Ibid*. The rejection made it clear that the words " 'controlled' or 'governed' " do not necessarily make a new decision a mere application of the existing rule. *Id*., at 415. Instead, the language leaves open the possibility that a court may either decide to extend an existing rule into previously uncharted territory or decline to do so.

The *Butler* Court reasoned that although courts frequently view their decisions as " 'controlled' or 'governed' by prior opinions" they are often aware of reasonable contrary conclusions reached by other courts. *Ibid*. This meant that, in some cases, the reach of a bright-line rule might be the subject of reasonable disagreement until the boundary is marked by the court of last resort. When this Court decided *Roberson*, it

marked the outer boundary. In *Butler*, the Court acknowledged that it would not have been illogical to decline to extend *Edwards* to the facts of *Roberson*. *Ibid*. It was evident from the manner in which lower courts had applied both *Edwards* and *Roberson* that *Edwards* had not dictated the outcome of the *Roberson* issue. *Ibid*.

In the present case, as in *Roberson*, the question is whether to expand the *Edwards* rule to a situation with a large factual difference from *Edwards*, a difference which substantially weakens the argument for a *per se* rule. See *Roberson*, 486 U. S., at 693 (Kennedy, J., dissenting). This Court has yet "to rule on" whether "the passage of time *alone*" is sufficient to expire the protections of *Edwards*. *Shatzer*, 405 Md., at 606-607, 954 A. 2d, at 1131 (emphasis in original). Because precedent alone does not answer the question, the underlying policies require close examination.

II. Presumptions and bright-line rules should not be extended into circumstances where they often produce erroneous conclusions.

This Court has noted the dangers of excessive use of conclusive presumptions. See *Coleman* v. *Thompson*, 501 U. S. 722, 737 (1991). The state court's decision in the present case treats the *Edwards* presumption as an absolute, applicable all of the time. See *Shatzer* v. *State*, 405 Md. 585, 606-607, 954 A. 2d 1118, 1131 (2008). Such presumptions, however, are "designed to avoid the costs of excessive inquiry where a *per se* rule will achieve the correct result in almost all cases." *Coleman*, *supra*, at 737. "*Per se* rules should not be applied . . . in situations where the generalization is incorrect as an empirical matter . . . ." *Ibid*.

An incorrect result is reached when the *Edwards* presumption is applied to forbid police-initiated contact merely because years earlier the accused requested an attorney. In this case, the presumption has little do with factfinding or the accused's fear that he is "unable to deal with the pressures of custodial interrogation without legal assistance." *Arizona* v. *Roberson*, 486 U. S. 675, 683 (1988). After a significant lapse in time between two interrogations, a presumption that the accused still feels "pressures of custodial interrogation" is unwarranted. If the accused waives his *Miranda* rights, he has demonstrated that he feels comfortable answering questions during his second interrogation, and it is highly unlikely this waiver is the result of "badgering" when two years have elapsed. Common sense contradicts the result that application of *Edwards* would compel. Adoption of the *Edwards* presumption will not "achieve the correct result in almost all cases[,]" but just the opposite. Cf. *Coleman*, 501 U. S., at 737.

In cases where there has been a significant lapse of time between the police honoring the accused's right to speak with his attorney and a new contact initiated by the police, the correct conclusion is reached by applying *Miranda* alone. That is, *Miranda* should be applied in the same manner as for an initial interrogation. In his second interrogation, the accused has had time to become familiar with the restraints of custody and is less likely to become the victim of custodial pressure. See Kassin, The Psychology of Confessions, 4 Annual Rev. L. Soc. Sci. 193, 201-202 (2008). His waiver of *Miranda* rights can be assessed as voluntary or not based on all the circumstances, instead of presuming it was the result of coercion. A presumption that a waiver is coerced rather than voluntary is unwarranted.

Extension of the *Edwards per se* rule to the present case would produce an erroneous result most of the time. The record before this Court does not demonstrate predicate facts of coercion or abuse that warrant presuming police badgering, or " 'inherently compelling pressures' of custodial interrogation." Cf. *Arizona* v. *Roberson*, 486 U. S. 675, 681 (1988). Not only is the presumption unnecessary, but it undercuts the truth-finding function of a valid *Miranda* waiver. Extending *Edwards* will immunize the accused from re-interrogation regardless of whether it occurs two hours, two days, or 2,000 days after his request. Immunization will occur not because police actually badgered him into waiving, but merely because he is able to establish he was in custody and had previously invoked counsel. In a case like Shatzer's, where custody is undisputed, the more important question is whether it may be presumed that his waiver was obtained through repeated questioning and intimidation. The only fact supporting that argument here is that Shatzer remained in prison for two years and seven months.

Shatzer's proposed application of *Edwards* is analogous to inferences this Court has held unconstitutional for lack of a rational connection between the facts proved and the facts presumed. See, *e.g.*, *Tot* v. *United States,* 319 U. S. 463, 464, 467-468 (1943) (receipt of firearms in interstate commerce presumed from simple possession). The marijuana case of *Leary* v. *United States*, 395 U. S. 6 (1969), for example, dealt with a statute that presumed that simple possession of marijuana was "sufficient evidence to authorize conviction" for smuggling, receiving, concealing, buying, or selling of a drug, knowing it had been illegally imported. *Id*., at 10, n. 1. This Court invalidated the statutory inference "unless it can at least be said with substantial assurance that the presumed fact is more

likely than not to flow from the proved fact on which it is made to depend." *Id.*, at 36.

Under Shatzer's proposed rule, coercion of the waiver would be presumed, a presumption that would preclude the State from using reliable evidence of the accused's guilt. This should not be the rule when the State has followed all of *Miranda*'s guidelines and the totality of the circumstances does not support a finding of actual coercion. When the State has waited a significant period of time between the first interrogation and the second interrogation, there is no reason to presume the second interrogation was an attempt to badger the accused into giving an involuntary confession. If it was unfair for the Government to employ a counterfactual presumption in *Leary* and *Tot*, it is similarly unfair for the accused to do so here. The facts are too attenuated to make the leap. If justice is due to the accuser as it is to the accused, see *Snyder* v. *Massachusetts*, 291 U. S. 97, 122 (1934), this Court should not impose on the people the kind of presumption it would not permit the people to impose on the defendant.

Edwards was intended to give full meaning to the *Miranda* protection, and *Arizona* v. *Roberson* provides the rationale behind continued application of *Edwards:* "the prophylactic protections that *Miranda* warnings provide to counteract the 'inherently compelling pressures' of custodial interrogation and to 'permit a full opportunity to exercise the privilege against self-incrimination . . . .' " *Roberson*, 486 U. S., at 681. That purpose is ill-served by extending *Edwards*' presumption into territory where the presumed fact is usually false.

III. The purpose of *Edwards* must be kept in mind when determining how far it should extend.

Edwards "established another prophylactic rule designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." *Michigan* v. *Harvey*, 494 U. S. 344, 350 (1990). We should not lose sight of the fact that the actual constitutional right involved is the right not to be compelled to be a witness against oneself. See U. S. Const., Amdt. 5. The *Miranda* rule is secondary, and the *Edwards* rule is tertiary. In *Davis* v. *United States*, 512 U. S. 452, 462 (1994), this Court declined to create "a third layer of prophylaxis to prevent police questioning when the suspect *might* want a lawyer." Similar restraint is in order here.

Miranda's bright line was established to protect the accused from compelled self-incrimination during a custodial interrogation. It was decided with reference to interrogation techniques that "[i]n essence," allowed secret, incommunicado, and inherently coercive interrogation practices. See *Miranda* v. *Arizona*, 384 U. S. 436, 455 (1966). "The presence of counsel" could serve as an "adequate protective device necessary to make the process of interrogation conform with the dictates of the [Fifth Amendment] privilege[,]" *id*., at 466, but sometimes its protection is not necessary. In some cases, warnings and a waiver will be sufficient.

By its terms, *Miranda* prohibits the prosecution from using statements "stemming from custodial interrogation of the defendant" unless the warning and waiver procedure is followed. *Id*., at 444-445. Caution is in order when applying this sweeping rule, bearing in mind that "[a]ll rights tend to declare themselves absolute to their logical extreme." *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349, 355 (1908)

(Holmes, J.). If *Miranda* were applied to the logical extreme of its language, it would needlessly exclude evidence far removed from its purpose. This Court has not applied it that way, but instead has recognized limitations that admit evidence when the literal wording of *Miranda* would seem to call for its exclusion.

This Court declined to apply *Miranda* literally in *Illinois* v. *Perkins*, 496 U. S. 292 (1990). In *Perkins*, a *Miranda* exception was allowed for an undercover officer posing as a fellow inmate. The exception was allowed because while *Miranda* must be strictly enforced, its enforcement is not necessary in situations that do not "implicate the concerns underlying *Miranda*." *Id*., at 296. Although *Miranda* found the Fifth Amendment privilege against self-incrimination to prohibit admission of unwarned statements made during a custodial interrogation, there was no reason to apply *Miranda* where "the essential ingredients of a 'police dominated atmosphere' and coercion" were lacking. *Ibid*. See also *infra*, at 24, 28 (discussing *Berkemer* v. *McCarty* and *Perkins*).

Before *Edwards*, in *Michigan* v. *Mosley*, 423 U. S. 96 (1975), this Court found it "evident" that some "literal interpretations" of passages from *Miranda* "would lead to absurd and unintended results." Mosley had been arrested for two robberies. *Id*., at 97. At the first interview, "[w]hen Mosley said he did not want to answer any more questions about the robberies, [the detective] promptly ceased the interrogation." *Ibid*. A few hours later, another detective sought to question Mosley about a murder unrelated to the robberies and "carefully advised him of his *Miranda* rights." *Id.,* at 98. In reaching its decision, this Court recognized that the validity of *Miranda*'s "so-called guidelines" was not at issue, but the passage of *Miranda* stating that "interrogation must cease" if the suspect invokes his

rights left open the question of whether the officers had violated the guideline in Mosley's case. See *id*., at 100-101. The Court noted two extreme interpretations of this passage. *Id*., at 102.

> "To permit continuation of custodial interrogation after a momentary cessation would clearly frustrate the purposes of *Miranda* by allowing repeated rounds of questioning to undermine the will of the person being questioned. At the other extreme, a blanket prohibition against the taking of voluntary statements . . . would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." *Ibid*.

The Court declined to interpret *Miranda* to require either extreme position. Neither the passage noted above "nor any other passage in the *Miranda* opinion can sensibly be read to create a *per se* proscription *of infinite duration* upon further questioning by an officer on any subject, once the person in custody has indicated a desire to remain silent." *Id*., at 102-103 (emphasis added).

Arizona v. *Roberson*, 486 U. S. 675, 683 (1988), distinguished *Mosley* by drawing the line between suspects who assert the right to have counsel during interrogation and those who assert the right not to be interrogated at all. It is far from self-evident that the former group is in greater danger of being badgered into a subsequent waiver. This dubious distinction should not be compounded by making it perpetual.

In Shatzer's two interrogations, his Fifth Amendment rights were scrupulously honored. The first officer complied with *Miranda*'s bright-line rule and advised Shatzer of his rights. When Shatzer indicated

he wanted to speak with an attorney, Detective Blankenship honored the *Edwards* rule. There is no evidence that Shatzer was badgered, and the notion that a second request for a waiver years later is somehow more coercive than an initial request strains credulity. In Shatzer's case, and others with similar facts, the purpose of *Miranda* has been served. There is no need to "create a *per se* proscription of infinite duration upon further questioning by any police officer . . . ." *Mosley*, 423 U. S., at 102-103.

IV. *Edwards*' bright-line rule should not be one of infinite duration.

A. The Value of Confessions.

Permitting *Edwards*' presumption to apply indefinitely diminishes public safety with little offsetting benefit. Instead of treating police interrogation as a public good, such a rule would treat interrogation as if it were a necessary evil. Without interrogation, "those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved." *Schneckloth* v. *Bustamonte*, 412 U. S. 218, 225 (1973). When a confession is freely given, excluding it from evidence at the expense of public safety is a disservice to justice. See *United States* v. *Washington*, 431 U. S. 181, 187 (1977); *Oregon* v. *Elstad*, 470 U. S. 298, 312 (1985).

Confessions obtained through noncoercive interrogation have always been a "proper element in law enforcement." *Miranda* v. *Arizona*, 384 U. S. 436, 478 (1966). Historically, when it was clear that the confession was voluntary, it was admissible as important, valid evidence. See *Dickerson* v. *United States,* 530 U. S. 428, 433 (2000). To be sure, custody does play a big role in securing confessions. The isolation and control brought

to bear on the accused during custody have been found to place considerable strain on a suspect. See *Miranda*, *supra*, at 455. In cases of extended prison custody, however, the "weakness of individuals" that custody is believed to prey upon fades as the accused becomes more familiar with both his surroundings and law enforcement. In cases of extended custody, voluntariness can still be found.

> "The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." *Schneckloth*, 412 U. S., at 225-226 (quoting *Culombe* v. *Connecticut*, 367 U. S. 568, 602 (1961)).

Of course "voluntariness" is not as easy to put into practice as it is to put down on paper. Communications between suspects and police are common, and it is not always clear if a statement is voluntary. Even so, this Court has allowed confessions obtained if the accused spontaneously changes his mind about speaking to police without an attorney, see *Edwards* v. *Arizona*, 451 U. S. 477, 485 (1981), as well as confessions for crimes where the right to an attorney had not attached. *Illinois* v. *Perkins*, 496 U. S. 292, 299 (1990). This Court has generally "rejected any paternalistic rule protecting a defendant from his intelligent and voluntary decisions about his own criminal case," *Michigan* v. *Mosley*, 423 U. S. 96, 109 (1975) (White, J., concurring) (citing *Faretta* v. *California*, 422 U. S. 806 (1975)), and in Shatzer's case there is no justification for doing so.

B. A Bright-Line Limit to a Bright-Line Rule.

Edwards created the bright line that interrogation must cease unless the defendant reinitiates interrogation. *Edwards*, 451 U. S., at 484-485. Most of the time, that bright line has produced satisfactory, or at least acceptable, results. In a limited number of cases, however, lower courts have struggled with how to apply *Edwards*' bright line. See *Shatzer* v. *State*, 405 Md. 585, 606, n. 10, 954 A. 2d 1118, 1130, n. 10 (2008); see also *Kochutin* v. *State*, 813 P. 2d 298, 304 (Alaska App. 1991). Put differently, it is impossible to apply the bright-line rules of *Miranda* and *Edwards* to every interrogation. They are bright-line rules that make it easier to decide the Fifth Amendment issue, but, like all bright-line rules, they require bright-line limits.

The advantage of bright-line rules is that they ease the cost of excessive inquiry into the specific facts of similar cases. See *Coleman* v. *Thompson*, 501 U. S. 722, 737 (1991). *Miranda*, for example, "changed the focus of much of the inquiry" from whether a confession was voluntary to whether the police complied with the *Miranda* guidelines. *Dickerson*, 530 U. S., at 434-435. The *Miranda* rule does not always bar the admission of confessions made during custodial interrogations where the warnings were not given. As we have seen, the bar is not universally applied. See Part III-B, *supra*. *Miranda*'s bright-line rule has some bright-line limits.

Edwards' secondary bright line establishes that statements are inadmissible once the accused asks for an attorney, unless the accused re-initiates conversa-

tion. *Edwards*, 451 U. S., at 484-485.[2] *Amicus* proposes that it is now time for this Court to establish a bright-line time limit for the application of *Edwards*. In cases where the accused has remained in custody and there has been a significant lapse in time between invocation of the right to counsel and a second interrogation, a specific cutoff should be established to minimize the incorrect holdings that would occur from perpetual application of the *Edwards* presumption. An established time limit for the *Edwards* presumption will both preserve the benefit of adopting presumptions and reduce the cost of excessive inquiry into factually similar cases.

Edwards' adoption of the "additional safeguard" of counsel unless the "accused himself initiates further communication" would not be jeopardized by a proposed cutoff. *Edwards*, 451 U. S., at 484. Rather, *Edwards*' purpose of providing clarity for both law enforcement and the accused would be preserved. A specific cutoff would strengthen *Edwards* and *Miranda* by providing a concrete guideline to law enforcement, the accused, public defenders, and courts to follow. "A major purpose of the Court's opinion in *Miranda* v. *Arizona*, 384 U. S., at 441-442, was 'to give concrete constitutional guidelines to law enforcement agencies and courts to follow.' " *Arizona* v. *Roberson*, 486 U. S. 675, 680 (1988). If the proposed rule is adopted, law enforcement will be on notice that once a prisoner has asked for counsel, officers must refrain from initiating

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2. In theory, it is possible to resume questioning in the presence of counsel for the suspect, but in practice the presence of counsel means no answers to the questions. See *Watts* v. *Indiana*, 338 U. S. 49, 59 (1949) (Jackson, J., concurring in the result). For a prisoner such as Shatzer with no pending charges, it is unlikely there is any legal authority to appoint counsel.

a new request for a waiver for a set period of time. The accused's attorney would also be aware that it was possible for the police to ask again after a set number of days had passed. Armed with this information, the attorney could advise his client that if he wished to have counsel present, the accused had to request his attorney's presence in the second interrogation. A bright line would also give courts one more way to assess the voluntariness of a *Miranda* waiver. Instead of speculating over whether lapse of time had eliminated the presumption of coercion, courts would know enough time had passed, and the accused would have to show that his second interrogation was coercive.

A specific cutoff for the *Edwards* presumption would also eliminate the threat of the "tenuous slippery slope" feared by the Maryland Court of Appeals when it issued its opinion. *Shatzer*, 405 Md., at 607, 954 A. 2d, at 1131. The Maryland Court of Appeals feared that by holding the vague standard of "lapse of time" sufficient, "the protections against the coercive pressures of interrogation [would] expire after an indeterminate time period had passed." *Ibid*. But this is easily remedied, and from the opinion in this case forward there would be no question as to what amount of time is sufficient. It is time to establish a new bright line to better preserve the purpose of *Miranda*.

Amicus proposes establishing 30 days as the new bright-line duration of the *Edwards* presumption. Thirty days would provide all of the benefits mentioned above, plus the additional benefit of recency. An interrogation that took place 30 days ago is still fresh in the interrogator's and the defendant's minds, and it is less likely that a new officer will be assigned to the same investigation. In addition, records are less likely to be misplaced.

While 30 days may seem arbitrary, there is significant benefit to its adoption. In the past, this Court has adopted similar guides for other pre-trial procedures where it has found the benefit to outweigh any burden.

County of Riverside v. *McLaughlin*, 500 U. S. 44 (1991), presented this Court with a problem similar to the *Edwards* dilemma posed by the present case. *Gerstein* v. *Pugh*, 420 U. S. 103, 125 (1975), had ruled that States "must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Id*., at 125. The "promptly after" language was intended to give "proper deference to the demands of federalism" based on the varying criminal procedures of the states, *McLaughlin*, 500 U. S., at 53, but its vagueness had flummoxed lower courts. Some, like the Ninth Circuit in *McLaughlin*, viewed "*Gerstein* as 'requir[ing] a probable cause determination to be made *as soon as the administrative steps incident to arrest were completed,* and that such steps should require only a brief period.' " *Id*., at 54 (quoting Ninth Circuit opinion). "[A] flurry of systemic challenges" arose in other courts as well. See *id*., at 56. This litigation had the effect of "putting federal judges in the role of making legislative judgments and overseeing local jailhouse operations," a situation which compelled this Court to set a specific time limit. *Ibid*. A specific time limit was necessary "to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds." *Ibid*. "Taking into account the competing interests articulated in *Gerstein,"* this Court established 48 hours as the maximum amount of time *Gerstein* permitted between arrest and the probable cause hearing. *Ibid*.

As cases like the present one illustrate, the time has come for this Court to do the same with the duration of the *Edwards* proscription on police-initiated contact as applied to those who must remain in continuous custody. If *Edwards* continues to prevent "further interrogation" without establishing a cutoff, the duration of the *Edwards pro se* proscription will be infinite. Of those that *Edwards* sought to protect—the accused and the integrity of the criminal justice system—the one that will benefit the most will be the violent offender, imprisoned for a lesser offense, who avoids reinterrogation for his violent crime by invoking his right to counsel once, and then remaining in custody for the duration of his sentence. If the offender serves 20 years, his violent offense will remain unresolved for 20 years. This is not justice. Establishing a time limit would not "run contrary" to the purpose of *Edwards* or *Miranda* and would better serve justice by protecting both the accused and the public. "[S]ubsequent cases have reduced the impact of the *Miranda* rule on legitimate law enforcement while reaffirming the decision's core ruling," *Dickerson*, 530 U. S., at 443, and it is time to do the same with *Edwards*.

V. *Edwards* should apply only to those in police custody, not correctional custody.

A. Pretrial v. Correctional Custody.

In addition to the time gap, there is a second distinction between the present case and the precedents supporting exclusion, *Edwards* and *Roberson*. Shatzer was not an arrestee in the custody of police with the power to release him, as Edwards and Roberson were. Shatzer was in the custody of the state corrections department pursuant to a final court judgment. In determining the reach of the *Edwards* v. *Arizona* rule,

it is important to keep in mind that the rule was adopted because "use of Edwards' confession against him at trial" violated his Fifth and Fourteenth Amendment rights "as construed by *Miranda* v. *Arizona*." *Edwards* v. *Arizona,* 451 U. S. 477, 480 (1981). *Miranda*'s interpretation of "custodial interrogation" addressed, with great specificity, police interrogation that took place after being taken into custody. To properly map out the scope of *Edwards*, then, one must look at the practices *Miranda* was intended to prevent.

When understood in *Miranda*'s context, custody should be limited to inherently coercive police station interviews or other custodial situations presenting the same danger. Some degree of overbreadth beyond *Miranda*'s core concerns is warranted in order to preserve the clarity of a bright-line rule, see *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000), but if a discrete, clearly definable class of custody does not present the danger that *Miranda* and *Edwards* were intended to prevent, that category should be excluded from *Edwards*' "second layer of prophylaxis." See *McNeil* v. *Wisconsin*, 501 U. S. 171, 176 (1991).

The facts surrounding Shatzer's custody suggest a clean, categorical limit to *Edwards*. Shatzer's conviction for an unrelated offense and sentence to state prison meant that he was no longer held in an inherently coercive police station environment. He was not held by the law enforcement officers questioning him, and there is no evidence to support police badgering. This custodial setting is very different from the ones in *Edwards* and *Roberson*, and that difference presents an alternative basis for reinstating the judgment in this case. Should this Court decide not to address this aspect of the custody issue because it is not strictly within the question presented, *amicus* submits that the

issue should be expressly reserved and its resolution left for a later date.

B. The Need for Miranda Warnings.

Miranda provides the fundamentals for the rights of suspects during custodial interrogation. The opinion's discussion of the reason why in-custody interrogations are a threat to the Fifth Amendment privilege against self-incrimination provides a guide for how far its strictures should be extended. See *Miranda*, 384 U. S., at 446-458. The primary concern in *Miranda* was "incommunicado interrogation of individuals in a police dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." *Id.*, at 445. The question presented by the present case is whether *Edwards* should be extended to a situation where the danger of an "incommunicado interrogation . . . in a police dominated atmosphere" is remote at best.

Miranda's protections flow from this Court's rejection of police interrogation practices that were advocated in F. Inbau and J. Reid, Criminal Interrogation and Confessions (1962), the leading textbook for training police officers at that time. See *Miranda*, 384 U. S., at 448-449, nn. 9 and 10. This text and others were used to establish that police were trained to use deception and coercion to elicit confessions. See *id.*, at 448-455. *Miranda* condemned the police tactics that played upon the duress inherent in the situation and " 'deprived [the subject] of every psychological advantage.' " *Id.*, at 449 (quoting C. O'Hara, Fundamentals of Criminal Investigation 99 (1956)). This Court did not believe Fifth Amendment rights could be adequately protected if the subject was placed in the investigator's office where " 'the investigator possesses all the advantages.' " *Id.,* at 450. Police custody exacerbated

the issue because it "deprive[d] [the subject] of any outside support[,]" and "[t]he aura of confidence in his guilt undermines his will to resist." *Id*., at 455. Thus, instead of getting a true confession, "[h]e merely confirms the preconceived story the police seek to have him describe." *Ibid*. *Miranda* warnings were conceived to prevent this result, and place "a proper limitation upon the custodial interrogation . . . " *Id*., at 447.

To be sure, Shatzer was continuously confined. As the Maryland Court of Appeals noted, his "freedom of movement and action was restricted." *Shatzer* v. *State*, 405 Md. 585, 616, 954 A. 2d 1118, 1137 (2008). But *Miranda* warnings are not required for every detention that significantly restricts freedom of movement. For example, *Miranda* warnings are not required before the roadside questioning of a motorist. See *Berkemer* v. *McCarty*, 468 U. S. 420, 440 (1984). Although the motorist in *Berkemer* had been deprived of his freedom of movement, "the atmosphere surrounding an ordinary traffic stop is substantially less 'police dominated' than that surrounding the kind of interrogation at issue in *Miranda* itself [citation], and in the subsequent cases in which we have applied *Miranda*." *Id*., at 438-439. Since the facts did not demonstrate that McCarty would be detained until he revealed incriminating information, there was no need to extend *Miranda* to this situation. *Id*., at 437.

Miranda warnings are also not required for probation interviews, see *Minnesota* v. *Murphy*, 465 U. S. 420, 430 (1984), even though the probationer is "in custody" for federal habeas purposes. See *ibid*. (citing *Jones* v. *Cunningham*, 371 U. S. 236, 241-243 (1963)). While probationers are "in custody" in the sense that their freedom of movement may be significantly restrained, many of the psychological ploys that *Miranda* held would compel self-incrimination are not present in

this type of official interrogation. *Id*., at 433. For example, the probationer has not been placed in an unfamiliar environment. The interview is typically in a place where he regularly meets with the official. *Ibid*. The circumstances also do not suggest that interrogation will continue until the individual submits to the will of his official interrogator. *Ibid*. Where these circumstances are not present, this Court has found extension of the *Miranda* precedent unnecessary. See *ibid*.

Shatzer's confinement bears more similarities to these cases than it does to the coercive environments in *Miranda* and its companion cases. His freedom of movement was restricted by his incarceration, but his interrogations had nothing to do with the duration of his incarceration. He knew he was speaking to a government agent, but the record does not support a presumption that he did not believe he could terminate the interview at any time. Most importantly, Detective Hoover obviously lacked the power to promise or credibly imply release in exchange for a confession. As a man already convicted for sexual abuse of a child and sentenced by a court, Shatzer had no reason to believe confessing to Detective Hoover for a second crime would allow him to leave the Roxbury Correctional Institution the next day or any time before he would otherwise be released.

As recent articles and empirical studies have shown, *Miranda's* rationale has more relevance when the interrogating officer has the power to release a suspect if the suspect cooperates. Conti, The Psychology of False Confessions, 2 J. Credibility Assessment & Witness Psych. 14 (1999), examined the reasons innocent people may confess and the psychological and social influences interrogators use to obtain confessions. Conti wrote that because *Miranda* sought to

prevent obtaining confessions through coercion, the judicial system needs to pay close attention to "inappropriate approaches of eliciting confessions" with special attention paid to the length of the interrogation process. *Id*., at 30-31. Conti and other researchers have focused on why some individuals give false confessions. *Id*., at 14. Although *Miranda* protects the guilty along with the innocent, protecting the innocent from false confessions is a primary concern deserving special consideration in the scope and enforcement of the rule. See *Withrow* v. *Williams*, 507 U. S. 680, 692-693 (1993). The research has shown that individuals give false confessions for a variety of reasons: a pathological need for fame, a morbid desire for notoriety, protection of a family member or friend, threats, promises, anxiety, fatigue, pressure, and confusion. Conti, *supra*, at 21-22. Some of these are within the interrogator's control, and some are not.

Interrogation methods that the criminal justice system can control include the abusive methods mentioned in *Miranda*, the most important of which is placing a suspect in an unfamiliar, private environment. *Id*., at 28-29. In this situation, the suspect is arguably compelled to confess because his interrogating officer exercises some control over the length of his detention. The situation is markedly different when a prisoner is serving time for a sentence that is unrelated to his current offense. In this situation, it is far more likely that the suspect confessed because of the strength of the evidence against him, or because he felt guilty and needed to get the crime "off his chest." See J. F. Sigurdsson, G. H. Gudjonsson, E. Einarsson, G. Gudjonsson, Differences in Personality and Mental State Between Suspects and Witness Immediately After Being Interviewed by Police, 12 Psychol., Crime & L. 619, 622-623 (2006).

Mathis v. *United States*, 391 U. S. 1 (1968), addressed whether *Miranda*'s protections are warranted in a prison setting, but this Court has not yet ruled on whether *Edwards*' extension of *Miranda*'s protection is necessary in this situation. The question raised by the present case is whether to extend *Mathis* beyond *Miranda* and into *Edwards*. The dubious legal reasoning of *Mathis* suggests it should not be extended.

Mathis had been serving a state sentence in prison when he gave incriminating evidence to a government agent investigating him for tax fraud. *Id.,* at 2. The agent did not give Mathis his *Miranda* warnings. *Id*., at 2-3. This Court suppressed the incriminating evidence, stating, "We find nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Id*., at 4-5. The majority did not look very hard. Without analysis, the opinion relied solely on *Miranda*'s conclusion that *Miranda* warnings were required whenever the accused was in custody, with "custody" defined as " 'taken into custody or otherwise deprived of his freedom by the authorities in any significant way.' " *Id*., at 5. Unlike *Berkemer*, *Mosley*, *Murphy*, and *Perkins*, there was no discussion of whether the primary concern behind the *Miranda* rule—that custody could be so inherently coercive as to compel the accused to make incriminating statements—was implicated in this situation. The *Mathis* Court held that preservation of the suspect's Fifth Amendment privilege required at least a *Miranda* warning, but we are left with no explanation as to why. *Id.,* at 4-5. Justice White's dissent, in contrast, does return to the underlying purpose of *Miranda*.

As he explained when he rejected the majority's "cavalier" conclusion that Mathis was "in custody" for *Miranda* purposes, Justice White correctly focused on

the "sense of the phrase" as it was used in *Miranda*. *Id*., at 7.

> "But *Miranda* rested not on the mere fact of physical restriction but on a conclusion that the coercion—pressure to answer questions—usually flows from a certain type of custody, police station interrogation of someone charged with or suspected of a crime. Although petitioner was confined, he was at the time of interrogation in familiar surroundings. Neither the record nor the Court suggest reasons why petitioner was 'coerced' into answering [the revenue agent's] questions any more than is a citizen interviewed at home by a revenue agent or interviewed in a Revenue Service office to which citizens are requested to come for interviews. The rationale of *Miranda* has no relevance to inquiries conducted outside the allegedly hostile and forbidding atmosphere surrounding police station interrogation of a criminal suspect." *Id*., at 7-8 (White, J., dissenting).

Since *Mathis*, this Court has not had occasion to reconsider whether Justice White had the better argument. However, *Illinois* v. *Perkins*, 496 U. S. 292 (1990), did hint that *Mathis* may not require extension of *Miranda* to all forms of incarceration. In *Perkins*, a defendant was in jail awaiting trial for an aggravated battery, unrelated to the murder that an undercover agent was investigating. 496 U. S., at 294. The agent was placed in the jail, and, during incarceration, Perkins voluntarily made incriminating statements to the agent that ultimately led to Perkins being charged for murder. *Id*., at 294-295. This Court reasoned that because " '[f]idelty to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated,' " *id*., at 296 (quoting

Berkemer v. *McCarty*, 468 U. S. 420, 437 (1984)), there was no need to extend *Miranda* to "conversations between suspects and undercover agents [that] do not implicate the concerns underlying *Miranda*." *Ibid.* *Perkins* distinguished *Mathis* on this basis, but also noted parenthetically, "[t]he bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official . . . ." *Id.*, at 299. While this comment is dictum, it does indicate that the simplistic application of *Miranda* and all of its progeny to every type of custody is not a foregone conclusion.

The cases that have specifically addressed *Edwards'* scope as construed by *Miranda* have done so in cases where the accused was still in police custody, not correctional custody. *Arizona* v. *Roberson*, 486 U. S. 675 (1988), affirmed the *Edwards* rule in a case where " 'the accused was continuously in *police* custody from the time of asserting his Fifth Amendment right through the time of the impermissible questioning. The coercive environment never dissipated.' " *Id.*, at 680 (emphasis added) (quoting state court opinion). This Court held that interrogation for a separate offense while still in police custody was a "factual distinction" that did not "hold any legal significance for Fifth Amendment purposes." *Id.*, at 678 (quoting *State* v. *Routhier*, 137 Ariz. 90, 97, 669 P.2d 68, 75 (1983)).

> "Especially in a case such as this, in which a period of three days elapsed between the unsatisfied request for counsel and the interrogation about a second offense, there is a serious risk that the mere repetition of the *Miranda* warnings would not overcome the presumption of coercion that is created by prolonged *police* custody." *Id.*, at 686 (emphasis added).

In contrast, the factual distinction that the suspect is *not* in police custody should hold legal significance.

Minnick v. *Mississippi*, 498 U. S. 146 (1990), did not change the understanding that the right to counsel can be waived. *Minnick* addressed whether the *Edwards* prohibition ceased once a suspect, held pre-trial in police custody for four days, had the opportunity to consult with a lawyer. *Id*., at 148-149. Minnick had been arrested on a Friday and was interviewed by two FBI agents on Saturday. *Id*., at 148. The agents read him his *Miranda* warnings, and Minnick stated, "Come back Monday when I have a lawyer." *Ibid*. The agents ceased their interview. *Id*., at 149. Minnick met with his appointed attorney over the weekend. *Ibid*. The following Monday, a Deputy Sheriff from Mississippi came to the San Diego jail to question Minnick. *Ibid*. Minnick claimed he was told he had to talk to the officer, but again he refused to sign a waiver form. *Ibid*. Minnick did answer questions and made incriminating statements. *Ibid*.

This Court's ruling in *Minnick* was a rejection of the Mississippi Supreme Court's ruling that *Edwards* applied up until the point that counsel had been made available to a suspect who asked for an attorney. *Id*., at 151-152. Relying on the facts surrounding Minnick's interrogation, as well as *Edwards*' protection " 'from badgering a defendant into waiving his previously asserted *Miranda* rights[,]' " *id*., at 150 (quoting *Michigan* v. *Harvey*, 494 U. S. 344, 350 (1990)), this Court found *Edwards* "to bar police-initiated interrogation unless the accused has counsel with him at the time of questioning." *Id*., at 153. The Court noted, "The case before us well illustrates the pressures, and abuses, that may be concomitants of custody." *Ibid*. Minnick claimed to have resisted both interrogations and did not sign a *Miranda* waiver in either interview.

Ibid. He was also interrogated for the same crime. *Id*., at 148-149. Allowing his statements from the second interview at trial would have been inconsistent with *Miranda*'s finding that the opportunity to consult with an attorney could not sufficiently counteract the compulsion created by custodial interrogations. *Id*., at 154 (citing *Miranda*, 384 U. S., at 470). A presumption was warranted because in this situation, there was reason to suspect that the pressures of police custody had a coercive effect. See *id*., at 153-154. In light of the differences between pretrial police custody and postjudgment correctional custody, *Minnick* does not foreclose the conclusion that extension of *Edwards*' prophylactic rule to the latter type is unnecessary.

C. Correctional Custody is Different.

The facts surrounding Shatzer's second interrogation illustrate a case where extension of *Edwards* is not necessary. Shatzer had been given his *Miranda* warnings and had voluntarily waived his rights. *Shatzer*, 405 Md., at 590, 954 A. 2d, at 1121. Shatzer's second interrogation took place in correctional custody, and not the police custody this Court has found inherently coercive. As a sentenced convict, Shatzer had no reason to believe that Detective Hoover had control over the length of time he remained in custody. This reduces the need to presume Shatzer's waiver of his *Miranda* rights was obtained through coercive promises of early release or any threats to indefinitely detain. Shatzer is not like the suspects in confession studies who confessed just to go home. See Kassin, The Psychology of Confessions, 4 Annual Rev. L. Soc. Sci. 193, 195 (2008). He was not going home in any event, except to the extent prison is "home." *Miranda*, *Edwards*, and *Roberson* have all sought to preserve the privilege against self-incrimination in the face of the inherently compel-

ling pressures of police custody. Confinement in a correctional facility is something different.

As a conclusive presumption that excludes evidence, the *Edwards* rule should not be extended to a situation where its conclusion is often wrong. See Part II, *supra*. Although Shatzer's freedom of movement was restricted while in correctional custody, his custody is not the type of custody that *Miranda* found dangerous. *Edwards* should not be extended to this situation.

CONCLUSION

The decision of the Maryland Court of Appeals should be reversed.

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