

January 2005

Criminal Law - Thirteen Going on Thirty: The Relevance of Age in the Miranda Custody Test

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Recommended Citation

Wagner, David (2005) "Criminal Law - Thirteen Going on Thirty: The Relevance of Age in the Miranda Custody Test," *Wyoming Law Review*. Vol. 5: No. 2, Article 13.
Available at: <https://scholarship.law.uwyo.edu/wlr/vol5/iss2/13>

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CRIMINAL LAW – Thirteen Going on Thirty: The Relevance of Age in the *Miranda* Custody Test, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004).

INTRODUCTION

On the night of September 22, 1995, Michael Alvarado, then seventeen years of age, and Paul Soto attempted to steal a truck in the parking lot of a shopping mall in Santa Fe Springs, California.¹ The driver of the truck was Francisco Castaneda.² Soto demanded Castaneda's money and the keys to his truck; when Castaneda refused to comply with Soto's demands, Soto shot him with a .357 Magnum.³ Immediately following the shooting, Alvarado and Soto, who were accompanied by a larger group of teenagers, fled to a nearby friend's house where Alvarado attempted to hide the gun under a bed.⁴

Approximately one month after the shooting, Los Angeles County sheriff's detective Cheryl Comstock contacted Alvarado's mother at work and left word at the Alvarado house that she "needed" to speak with Michael Alvarado.⁵ Alvarado's parents brought him to the Sheriff's station, and both parents gave their permission for the detective to interview Alvarado.⁶ Comstock escorted Alvarado to a small room where he was interviewed for approximately two hours.⁷ Alvarado was aware the interview was being recorded.⁸ At no time did Detective Comstock tell Alvarado he was or was not under arrest, nor did she give him a warning as prescribed in *Miranda v. Arizona*.⁹ In Alvarado's initial version of the events that took place the night of the shooting, he omitted any mention of the crimes.¹⁰ However, Comstock was persistent and urged Alvarado to tell the truth about the shooting.¹¹ Alvarado slowly changed his story as Comstock appealed to his sense of

1. Petitioner's Brief at 2, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684); see also *Yarborough v. Alvarado*, 124 S. Ct. 2140, 2144-45 (2004).

2. *Id.* at 2144.

3. *Id.*

4. Respondent's Brief at 7, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684).

5. *Id.* at 2.

6. *Alvarado*, 124 S. Ct. at 2145; Petitioner's Brief at 3, *Alvarado* (No. 02-1684). Respondent contended Alvarado watched Comstock "summarily refuse" his parents' request to accompany their son into the interrogation room. Respondent's Brief at 20, *Alvarado* (No. 02-1684).

7. *Alvarado*, 124 S. Ct. at 2145.

8. *Id.*

9. *Id.* See *infra* note 21.

10. *Alvarado*, 124 S. Ct. at 2145.

11. *Id.*

honesty.¹² Ultimately, Alvarado made several self-incriminating statements.¹³ He admitted to helping Soto steal the truck and that he knew Soto was armed.¹⁴ Alvarado also admitted he had tried to hide the gun, but stated he did not expect Soto to kill anyone.¹⁵ Toward the end of the interview Comstock asked Alvarado if he wanted to use the telephone but he declined.¹⁶ Comstock indicated to Alvarado that he would be allowed to return home at the end of the interview.¹⁷ During the interview Detective Comstock asked Alvarado twice if he needed to take a break and he declined both times.¹⁸ When the interview concluded, Comstock escorted Alvarado back to his parents who were waiting in the lobby of the sheriff's station.¹⁹

Approximately two months after the interview, Alvarado was charged with first-degree murder and attempted robbery.²⁰ Prior to the trial, Alvarado moved to suppress the statements he made to Comstock, arguing the statements were made during a custodial interrogation and were therefore inadmissible under *Miranda*.²¹ The prosecution argued the *Miranda* ad-

12. *Id.* In appealing to Alvarado's sense of honesty, Comstock stated, "I know it's very difficult when it comes time to 'drop the dime' on somebody[,] . . . [but] if that had been your parent, your mother, or your brother, or sister, you would darn well want [the killer] to go to jail 'cause no one has the right to take someone's life like that.[]'" *Id.* at 2145-46. This line of questioning may be seen as exploiting a juvenile's known susceptibility to familial ties. See *Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit; . . . historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children."). The *Parham* Court recognized the strong relationship that exists amid family members, especially between children and their parents. *Id.*

13. *Alvarado*, 124 S. Ct. at 2146.

14. *Id.*

15. *Id.*

16. Petitioner's Brief at 3, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684).

17. *Id.*

18. *Alvarado*, 124 S. Ct. at 2146.

19. *Id.*

20. *Id.* See Petitioner's Brief at 4, *Alvarado* (No. 02-1684).

21. *Id.* at 3. *Miranda* determined that:

[T]he process of in-custody interrogation of persons suspected or accused of a crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.

Miranda v. Arizona, 384 U.S. 436, 467 (1966). A custodial interrogation is one in which the suspect is under the care and control of the law enforcement officers conducting the interrogation, and as such, the officers control the suspect's freedom to leave. *Id.* at 444 ("By custodial interrogation we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant

visement was not required because the interview was noncustodial.²² The trial court denied Alvarado's motion and determined the evidence was admissible on the grounds the interview was noncustodial.²³ The excerpts of the tape were played at trial as part of the prosecution's case in chief.²⁴ Ultimately, Alvarado was convicted by a jury of first-degree murder and attempted robbery.²⁵ However, the trial judge reduced Alvarado's conviction to second-degree murder.²⁶ Subsequently, Alvarado was sentenced to fifteen years to life in prison.²⁷

Alvarado appealed his conviction, again arguing the statements he made during his interview with Comstock should be excluded because he was subjected to a custodial interrogation and did not receive a *Miranda* warning.²⁸ The California Supreme Court denied Alvarado's petition for review.²⁹ Alvarado filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), in the United States District Court for the Central District of California.³⁰ The district court agreed with the state court's rejection of Alva-

way."); see also BLACK'S LAW DICTIONARY 390 (7th ed. 1999) (defining "custody" as "[t]he care and control of a thing or person for inspection, preservation, or security").

22. Petitioner's Brief at 4, *Alvarado* (No. 02-1684); see BLACK'S LAW DICTIONARY 825 (7th ed. 1999) (defining "custodial interrogation" as "[i]ntense police questioning of a detained person" as opposed to "investigatory interrogation," which is "[r]outine, nonaccusatory questioning by the police of a person who is not in custody").

23. *Alvarado*, 124 S. Ct. at 2146. The Supreme Court has prescribed a two step analysis when determining whether a suspect is in custody: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

24. Respondent's Brief at 5, *Alvarado* (No. 02-1684). The Supreme Court's summation of the facts of this case leads one to believe the prosecution only used the tapes from the interview to impeach Alvarado's testimony: "the government's cross-examination relied on Alvarado's statement to Comstock . . . [w]hen Alvarado denied particular statements, the prosecution countered by playing excerpts from the audio recording of the interview." *Alvarado*, 124 S. Ct. at 2146. If this were true, the Court would need only determine the voluntary nature of the statements, as it is well established that even if a statement is deemed inadmissible as evidence because it was taken in violation of a defendant's *Miranda* rights, it may be admitted to show inconsistencies in the defendant's statements at trial. See *Harris v. New York*, 401 U.S. 222, 226 (1971).

25. *Alvarado*, 124 S. Ct. at 2146.

26. *Id.* Alvarado's sentence was reduced "for his comparatively minor role in the offense." *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* See 28 U.S.C. § 2254 (2000). The Anti-Terrorism Effective Death Penalty Act of 1996 (AEDPA) changed federal habeas corpus jurisprudence: "[p]rior to AEDPA, federal courts entertaining a habeas petition reviewed state court determinations of federal law *de novo*. AEDPA, however, amended habeas law to direct federal courts to accord extreme deference to state court determinations of federal law." Scott Dodson, *Habeas Review of Perfunctory State Court Decisions on the Merits*, 29 AM. J. CRIM. L. 223, 226 (2002); see, e.g., *Otero v. Eisenschmidt*, 01 Civ. 2562, 2004 U.S. Dist. LEXIS 22439, at *55 (S.D.N.Y.

rado's claim he was in custody and determined the state court's decision was not contrary to, nor was it an unreasonable application of, clearly established federal law.³¹ However, the United States Court of Appeals for the Ninth Circuit reversed the district court's decision.³²

The Ninth Circuit, in *Alvarado v. Hickman*, concluded Michael Alvarado's juvenile status and experience are factors to be considered in a custody determination.³³ The Ninth Circuit acknowledged the Supreme Court had considered a suspect's juvenile status in similar situations and therefore juvenile status must be a factor in the *Miranda* custody inquiry.³⁴ As such, in considering the additional factors of his age and experience, the Ninth Circuit concluded Alvarado was in custody during his interview with Comstock.³⁵ The Court of Appeals held that in light of the clearly established law concerning juvenile status, it was unreasonable to conclude Alvarado was not in custody during the Comstock interview.³⁶ Additionally, the Ninth Circuit held the admission of Alvarado's incriminating statements had both a substantial and injurious effect on the jury's verdict.³⁷ The United States

Nov. 8, 2004) (noting a high degree of deference must be given to a state court's adjudication under the AEDPA); see also BLACK'S LAW DICTIONARY 715 (7th ed. 1999) (defining "habeas corpus" as "[a] writ employed to bring a person before a court, most frequently to ensure the party's imprisonment or detention is not illegal (*habeas corpus ad subjiciendum*)").

31. Petitioner's Brief at 5, *Alvarado* (No. 02-1684). The District Court noted the "deferential standard of review provided by 28 U.S.C. § 2254(d)" precluded relief. *Alvarado*, 124 S. Ct. at 2147. Section 2254(d) provides in relevant part:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d) (2000).

32. *Alvarado*, 124 S. Ct. at 2147.

33. *Id.* at 2150. See *Alvarado v. Hickman*, 316 F.3d 841, 854-55 (9th Cir. 2002).

34. *Id.* The Ninth Circuit has recognized that juveniles are more susceptible to police coercion than are similarly situated adults; it believed the logical conclusion of such a determination is that juvenile status must be taken into consideration when determining the appropriate level of procedural safeguards that must exist during a custodial interrogation. *Alvarado*, 316 F.3d at 849-50.

35. *Id.* at 854-55.

36. *Id.* ("After identifying these relevant circumstances, it is simply unreasonable to conclude that a reasonable 17-year-old, with no prior history of arrest or police interviews, would have felt that he was 'at liberty to terminate the interview and leave.'"); see *infra* note 98 and accompanying text which outlines the test the Ninth Circuit used to determine that Alvarado was in custody.

37. *Id.* at 855; see also Petitioner's Brief at 5, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (No. 02-1684). See also Petitioner's Brief at 5, *Alvarado* (No. 02-1684). See *Brecht v. Abra-*

Supreme Court granted *certiorari* to determine whether the state court's adjudication of the claim "involved an unreasonable application" of "clearly established law" when it concluded that Alvarado was not in custody.³⁸

The Supreme Court determined, using the custody test found in *Thompson v. Keohane*, that Alvarado had not been in custody during the interview; accordingly, no *Miranda* warning was required.³⁹ According to the United States Supreme Court, the state court's failure to consider Alvarado's age and experience was not an unreasonable application of clearly established law.⁴⁰ Furthermore, the Court stated that to require law enforcement to consider a suspect's age and experience would turn the objective *Miranda* custody test into a subjective test.⁴¹

This case note will discuss the pertinent cases in relation to 28 U.S.C. § 2254(d)(1), the *Miranda* custody test and juvenile status. Next, this note will provide an overview of the principal case and the rationale for the Supreme Court's decision. Finally, the Analysis section will examine two crucial issues. First, this note will argue the Supreme Court incorrectly held that age and experience do not need to be considered in the *Miranda* custody test. Second, this note will explain the effect of 28 U.S.C. § 2254's analysis on the outcome of the case, and how the Court failed to provide clarification in this vague area of law. This case note will also suggest that protecting juveniles is a fundamental principle of the law. Furthermore, considering age does not create a subjective test and therefore age should have been considered as a factor in the custody test under 28 U.S.C. § 2254(d)(1)'s "extension analysis."

BACKGROUND

28 U.S.C. § 2254(d)(1)

After the California Supreme Court denied Alvarado's petition for review, he filed a petition for writ of habeas corpus under 28 U.S.C. § 2254(d)(1) in the United States District Court for the Central District of California.⁴² Section 2254(d) provides in relevant part:

hamson, 507 U.S. 619, 637 (1993) (defining the magnitude of constitutional error that is sufficient to justify habeas relief).

38. *Alvarado*, 124 S. Ct. at 2147 (quoting 28 U.S.C. § 2254(d)(1) (2000)).

39. *Id.* at 2149, 2152. See *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (outlining requirements for determining if a suspect is in custody); see *infra* note 98 and accompanying text.

40. *Alvarado*, 124 S. Ct. at 2152.

41. *Id.* at 2151 ("[T]he [*Miranda*] custody inquiry states an objective rule designed to give clear guidance to police, while consideration of a suspect's individual characteristics—including his age—could be viewed as creating a subjective inquiry.").

42. *Id.* at 2146.

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was *contrary to*, or involved an *unreasonable application of*, clearly established Federal law, as determined by the Supreme Court of the United States[.]⁴³

The United States Supreme Court did not review this case *de novo*.⁴⁴ Instead the analysis the Court used to reach its decision was deferential to the state court's holding.⁴⁵ This affected both the reason for and the precedential value of the Court's decision.⁴⁶ Additionally, the Ninth Circuit in *Alvarado v. Hickman* utilized § 2254(d)(1) when it determined the lower court's holding was an unreasonable application of federal law.⁴⁷

Three cases are relevant to the Supreme Court's § 2254(d)(1) inquiry as each helps define what is "contrary to" or an "unreasonable application of clearly established federal law." First, in *Teague v. Lane*, the Court addressed whether a law is new and thus not "clearly established" under the relevant statute.⁴⁸ In *Teague*, the Court was asked to decide if, by way of a petition for a writ of habeas corpus, a petitioner could receive retroactive relief under a decision made after the petitioner was convicted.⁴⁹ The gen-

43. 28 U.S.C. § 2254(d)(1) (2000) (emphasis added).

44. See *supra* note 30.

45. *Id.*

46. *Alvarado*, 124 S. Ct. at 2152 ("[T]he state court's failure to consider Alvarado's age does not provide a proper basis for finding that the state court's decision was an unreasonable application of clearly established law.").

47. *Alvarado v. Hickman*, 316 F.3d 841, 853 (9th Cir. 2002) (stating "[o]ur analysis involves the extension of the principle that juvenile status is relevant to the conduct of custodial interrogation to the further determination whether a defendant is, in fact, 'in custody'").

48. *Teague v. Lane*, 489 U.S. 288, 301 (1989).

49. *Id.* at 293-94. The Petitioner in *Teague*, alleged both that he did not receive a fair cross section of jury members on his jury as required by the Sixth Amendment and that this requirement also applies to petit juries. *Id.* at 292. Petitioner sought the benefit of *Batson v. Kentucky*, 476 U.S. 79, 96-97 (1986) where the Court held as follows:

[A] defendant can establish a prima facie case by showing that he is a "member of a cognizable racial group," that the prosecutor exercised "peremptory challenges to remove from the venire members of the defendant's race," and that those "facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race." Once the defendant makes out a prima facie case of discrimination, the burden shifts to the prosecutor "to come forward with a neutral explanation for challenging black jurors."

eral rule set forth in *Teague* was that “new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.”⁵⁰ So a rule that is considered “new” is not deemed “clearly established” federal law for purposes of a § 2254 analysis.⁵¹ Accordingly, in the later *Williams* case, the Supreme Court stated, “whatever would qualify as an old rule under our *Teague* jurisprudence will constitute ‘clearly established Federal law, as determined by the Supreme Court of the United States.’”⁵²

In *Williams v. Taylor*, the second relevant § 2254(d)(1) case, the Court specifically addressed and attempted to explain the “contrary to” requirement found in § 2254(d)(1).⁵³ In *Williams*, the petitioner sought a federal writ of habeas corpus pursuant to § 2254, citing ineffective assistance of counsel.⁵⁴ The opinion of the Court was split with respect to the interpretation of § 2254(d)(1).⁵⁵

Teague, 489 U.S. at 295 (quoting *Boston*, 476 U.S. at 96-97).

50. *Id.* at 309. The Court defined what constitutes a new rule:

It is admittedly often difficult to determine when a case announces a new rule, and we do not attempt to define the spectrum of what may or may not constitute a new rule for retroactivity purposes. In general, however, a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government.

Id. at 301.

51. *Williams v. Taylor*, 529 U.S. 362, 379-80 (2000). In *Williams*, the Court recognized the relationship between *Teague*'s definition of a “new rule” and the “clearly established law” provision found in § 2254:

The antiretroactivity rule recognized in *Teague*, which prohibits reliance on “new rules,” is the functional equivalent of a statutory provision commanding exclusive reliance on “clearly established law.” Because there is no reason to believe that Congress intended to require federal courts to ask both whether a rule sought on habeas is “new” under *Teague*—which remains the law—and also whether it is “clearly established” under AEDPA, it seems safe to assume that Congress had congruent concepts in mind.

Id.

52. *Id.* at 412.

53. *Id.* at 362.

54. *Id.* at 372.

55. *Id.* at 367. The *Williams* Court was split 5-4 as to the proper interpretation of § 2254(d)(1). Justice O'Connor wrote the majority opinion, and Chief Justice Rehnquist, Justice Kennedy and Justice Thomas joined her. *Id.* at 399. The dissenting opinion concerning § 2254(d)(1) was written by Justice Stevens, in which Justices Souter, Ginsburg, and Breyer joined. *Id.* at 367 (Stevens, J., dissenting).

The *Williams* majority agreed with the Fourth Circuit's interpretation of § 2254(d)(1) in *Green v. French*.⁵⁶ When addressing the "contrary to" clause the Fourth Circuit held:

[A] state court's decision is "contrary to" this Court's clearly established precedent in two ways. First, . . . if the state court arrives at a conclusion opposite to that reached by this Court on a question of law. Second, . . . if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to ours.⁵⁷

The Supreme Court went on to assert that the state court's decision must be "substantially different from the relevant precedent of this Court" to be contrary to well established federal law.⁵⁸

In *Green*, the Fourth Circuit also addressed the meaning of "unreasonable application" of clearly established federal law:

[A] state-court decision can involve an "unreasonable application" of this Court's clearly established precedent in two ways. First, . . . if the state court identifies the correct governing legal rule from this Court's cases but unreasonably applies it to the facts of the particular state prisoner's case. Second, . . . if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or *unreasonably refuses to extend* that principle to a new context where it should apply.⁵⁹

The *Williams* majority agreed with *Green* wherein the court ruled that a federal court may not issue a writ simply because a state court applied the law "erroneously or incorrectly," but rather it must also be unreasonable.⁶⁰

56. *Id.* at 405-13. See *Green v. French*, 143 F.3d 865 (4th Cir. 1998).

57. *Williams*, 529 U.S. at 405 (citing *Green*, 143 F.3d at 869-70).

58. *Id.*

59. *Id.* at 407 (citing *Green*, 143 F.3d at 869-70) (emphasis added). Whether a state court must or must not extend prior Supreme Court precedent to a new context is known as the "extension analysis." See *infra* note 69 and accompanying text. The majority noted the "extension analysis" would present a unique challenge for courts and explicitly left that issue undecided as it was not relevant to the adjudication of the case at bar. *Williams*, 529 U.S. at 408-409.

60. *Id.* at 411 (noting an *unreasonable* application of law is different from an *incorrect* or *erroneous* application of law). In his dissent, Justice Stevens reasoned if the federal court sees the state court's decision to be reasonable on its face, but after further analysis it proves to be wrong, it is the minority's conclusion that the decision is then in fact "unreasonable." *Id.* at 389 (Stevens, J., dissenting). The dissent's interpretation deviated significantly from the majority with respect to the deference that must be given to a lower court's decision. *Id.* at 384, 403 (Stevens, J., dissenting). The dissent contended that federal courts "have an inde-

The *Williams* majority then addressed the meaning of the § 2254(d)(1) statutory phrase “clearly established Federal law, as determined by the Supreme Court of the United States.”⁶¹ The Court defined “clearly established federal law” to mean the “holdings, as opposed to dicta, of this Court’s decisions as of the time of the relevant state-court decisions.”⁶²

In the third case relevant to the Court’s § 2254(d)(1) inquiry, *Lockyer v. Andrade*, the Court reaffirmed many of the principles found in *Williams*.⁶³ The Court disagreed with the Ninth Circuit’s requirement that federal habeas courts review the state court decision *de novo* before applying the § 2254 test.⁶⁴ It then reiterated its prior holding that the “only question that matters under § 2254(d)(1) [is] whether a state court decision is contrary to, or involved in an unreasonable application, of clearly established Federal law.”⁶⁵ The *Lockyer* Court suggested the first step under § 2254 is to determine the “clearly established” law concerning the case at bar.⁶⁶ The Court went on to reaffirm the majority opinion in *Williams* concerning both the “contrary to” and “unreasonable application” clauses found in § 2254(d)(1).⁶⁷ The Supreme Court concluded its § 2254 analysis by confirming that a federal court may grant habeas relief by applying a governing legal principle to facts different from those in which the principle was established.⁶⁸ This “extension analysis” makes it an unreasonable application of the clearly established law if a state court “either unreasonably extends a legal principle from [the Supreme Court’s] precedent to a new context where it should not apply or *unreasonably refuses to extend that principle to a new context where it should apply*.”⁶⁹ However, the Court qualified this statement, concluding the nature of the governing legal principle will determine

pendent obligation to say what the law is.” *Id.* at 384 (Stevens, J., dissenting) (quoting *Wright v. West*, 505 U.S. 277, 308-309 (1993)). Accordingly, although the federal court must not “run roughshod” over state courts findings, there is no requirement to give these findings any deference. *Id.* at 382-84 (Stevens, J., dissenting).

61. *Id.* at 412. See also 28 U.S.C. § 2254(d)(1) (2000).

62. *Williams*, 529 U.S. at 412 (“[T]he statutory language makes clear . . . that § 2254(d)(1) restricts the source of clearly established law to this Court’s jurisprudence.”).

63. *Lockyer v. Andrade*, 538 U.S. 63 (2003).

64. *Id.* at 71 (rejecting the Ninth Circuit’s requirement that “federal habeas courts review the state court’s decision *de novo* before applying the AEDPA standard of review”).

65. *Id.* (concluding that any requirement utilized by a federal court which deviates from the plain language of § 2254 is improper).

66. *Id.* The majority plainly defined “clearly established” law as the “governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision.” *Id.* at 71-72.

67. *Id.* at 74-75. The Court also solidified its stance that the incorrectness or erroneous nature of a lower court’s decision does not, under the “unreasonable application” clause in § 2254, constitute grounds for reversal absent the state court’s application also being objectively unreasonable. *Id.* at 75.

68. *Id.* at 76 (“Section 2254(d)(1) permits a federal court to grant habeas relief based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced.”).

69. *Williams v. Taylor*, 529 U.S. 362, 407 (2000) (emphasis added); see also *Lockyer*, 538 U.S. at 76 (acknowledging the viability of an “extension analysis”).

the breadth of the decision a state court may come to and still not unreasonably apply the "clearly established" law.⁷⁰

The Miranda Custody Test

In *Miranda v. Arizona*, the Supreme Court recognized both the importance of protecting individuals from the compelling pressures which exist during a custodial interrogation, and the measures which must be taken to ensure an individual's Fifth Amendment rights are not violated.⁷¹ *Miranda* consisted of four consolidated cases, all with similar factual circumstances, which raised the same constitutional issue.⁷² In each of these cases the suspects were interrogated in a room located within a police station for the purpose of obtaining a confession.⁷³ The only other individual present was a police officer, detective, or a prosecuting attorney.⁷⁴ None of the suspects in these four cases were given a comprehensive warning of their constitutional rights prior to the interrogation.⁷⁵ Furthermore, all the interrogations elicited self-incriminating responses that were admitted at trial.⁷⁶ The majority in *Miranda* recognized the extent to which law enforcement personnel are schooled in the art of obtaining a confession and the coercive environment

70. *Id.* at 76.

71. *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). The Court in *Miranda* directly addressed the concerns surrounding custodial interrogations:

Without proper safeguards, the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.

Id. *Miranda* requires at a minimum that the suspect is:

[W]arned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation.

Id. at 479.

72. *Id.* at 445 ("The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way.").

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

often created to get that fervently sought after confession.⁷⁷ The Court recognized the imbalance of power inherent in a custodial interrogation and effectively tried to even the playing field by requiring a specific warning to be given prior to such an interrogation.⁷⁸

Knowing a *Miranda* warning is required prior to all custodial interrogations, the next step is to determine whether an individual is in custody for *Miranda* purposes. *Oregon v. Mathiason* specifically dealt with the circumstances that create a coercive environment, thereby establishing custody and requiring a *Miranda* warning.⁷⁹ The United States Supreme Court overturned the Supreme Court of Oregon's finding that the defendant's confession was obtained in a coercive environment.⁸⁰ The Court relied heavily on the fact that the defendant "came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a ½-

77. *Id.* at 448-49. The *Miranda* Court noted the extensive training and methodology behind law enforcement tactics used to elicit a confession. *Id.* The Court addressed specific verbiage which may be found in police manuals and text which demonstrates how confessions may be obtained through psychological control:

It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation "If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions of criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his office the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of law."

Id. at 449-50 (citing O'Hara, *Fundamentals of Criminal Investigation* (1956)).

78. *Id.* at 457-58. The Court also recognized that "the modern practice of in-custody interrogation is psychologically rather than physically oriented [C]oercion can be mental as well as physical." *Id.* at 448.

79. *Oregon v. Mathiason*, 429 U.S. 492-95 (1977) ("Respondent Carl Mathiason was convicted of first-degree burglary after a bench trial in which his confession was critical to the state's case. At trial he moved to suppress the confession as fruit of questioning by the police not preceded by the warnings required in *Miranda v. Arizona*."). In *Mathiason*, the investigating officer left his business card and a note at the defendant's apartment. *Id.* at 493. The note stated, "I'd like to discuss something with you." *Id.* The defendant contacted the officer, and the officer stated that he would like to meet, giving the defendant the option of choosing the location. *Id.* The officer suggested the state patrol office, and the defendant agreed. *Id.* Prior to the interview the officer shook the defendant's hand and notified him that he was not under arrest. *Id.* The officer then led the defendant to a room where he informed him that he would like to discuss a burglary. *Id.* In less than five minutes the defendant admitted to taking the property. *Id.* The officer then advised the suspect of his *Miranda* rights and tape-recorded a confession. *Id.* at 494.

80. *Id.* at 495 (noting "[i]n the present case, however, there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way").

hour interview respondent did in fact leave the police station without hindrance. It is clear from these facts that Mathiason was not in custody."⁸¹ The Court reasoned that simply because questioning takes place in a coercive environment does not automatically mandate a *Miranda* warning.⁸² Rather, the relevant inquiry in determining whether a suspect is in custody for *Miranda* purposes is whether the individual's "freedom to depart was restricted in any way."⁸³

In *Berkemer v. McCarty*, the Court first announced and applied the "reasonable person" standard to the *Miranda* custody test.⁸⁴ The Court was asked to address two issues in *Berkemer*: first, whether *Miranda* is applicable to interrogations involving minor offenses; second, whether *Miranda* is applicable to the questioning of motorists detained pursuant to traffic stops.⁸⁵ The Supreme Court decided no distinction should be made as to the severity of the offense when determining if *Miranda* is applicable.⁸⁶ This effectively broadened the protections that *Miranda* affords.⁸⁷

Addressing the second issue, the Court held:

The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of *Miranda*.⁸⁸

81. *Id.*

82. *Id.* (noting "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime"). Accordingly, police officers are not required to issue warnings to everyone they question, but rather only to those individuals which are deemed to be "in custody." *Id.*

83. *Id.*

84. *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984) ("The only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.").

85. *Id.* at 426-27.

86. *Id.* at 433 (recognizing "the purposes of the safeguards prescribed by *Miranda* . . . are implicated as much by in-custody questioning of persons suspected of misdemeanors as they are by questioning of persons suspected of felonies").

87. *Id.* at 434 (holding "that a person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in *Miranda*, regardless of the nature or the severity of the offense of which he is suspected or for which he was arrested").

88. *Id.* at 440. A cursory search of an individual is often referred to as a *Terry* stop. See *U.S. v. Drayton*, 536 U.S. 194, 207 (2002) (stating the officer may have "had reasonable suspicion to conduct a *Terry* stop and frisk on Drayton"); see also *Terry v. Ohio*, 392 U.S. 1 (1968). The Court in *Terry* stated:

The Court alluded to the importance of having an objective, rather than subjective, custody test.⁸⁹ Neither the subjective intent of the officer involved nor that of the suspect is relevant in determining whether a *Miranda* warning is required.⁹⁰

The concept of an objective "reasonable person" standard was revisited in *Stansbury v. California*.⁹¹ In *Stansbury*, the Court was asked to address the "rules for determining whether a person being questioned by law enforcement officers is held in custody, and thus entitled to the warnings required by [*Miranda*]." ⁹² The defendant attempted to suppress the incriminating statements he made at the police station by alleging he was in custody at the time of the interview, and therefore, a *Miranda* warning was required but not given.⁹³ The Supreme Court of California relied on the fact the interviewing officer did not view the defendant as a suspect until certain statements were made.⁹⁴ The lower court was essentially looking to the subjective state of mind of the officer when trying to establish, for purpose of *Miranda*, when the defendant should be classified as "in custody."⁹⁵ The United States Supreme Court very plainly stated an officer's subjective intent has no bearing on the *Miranda* custody test if his intent remains undisclosed.⁹⁶ The Supreme Court went on to hold that "[t]hose beliefs are relevant only to the extent they would affect how a reasonable person in the po-

[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Terry, 392 U.S. at 30-31.

89. *Berkemer*, 468 U.S. at 442 ("Although Trooper Williams apparently decided as soon as respondent stepped out of his car that respondent would be taken into custody, . . . Williams never communicated his intention to respondent.").

90. *Id.* See *People v. Rodney P.*, 21 N.Y.2d 1, 9-10 (1967).

91. *Stansbury v. California*, 511 U.S. 318 (1994).

92. *Id.* at 319.

93. *Id.* at 321.

94. *Id.* at 322.

95. *Id.* at 325-26 (noting the "officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned").

96. *Id.* at 324 ("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*.").

sition of the individual being questioned would gauge the breadth of his or her freedom of action.”⁹⁷

Finally, and most recently, in *Thompson v. Keohane*, the Supreme Court established a two-part standard for determining whether a suspect is in custody:

[F]irst what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players’ lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.⁹⁸

This two-part test represents the current standard for determining if a suspect is in custody.⁹⁹ The *Alvarado* Court did not consider—or at least did not mention in its opinion—pertinent precedent concerning the factors that must be considered when evaluating the totality of the circumstances surrounding an interrogation.¹⁰⁰

In *Rhode Island v. Innis* the Supreme Court addressed one of these factors.¹⁰¹ Specifically, the Court determined whether a statement made by a suspect in custody was voluntary and recognized any knowledge an officer has concerning a suspect which makes that individual more susceptible to a particular form of persuasion may be important in determining whether a self-incriminating statement was made voluntarily.¹⁰² The test for the voluntariness of a statement is separate from the *Miranda* custody test.¹⁰³ How-

97. *Id.* at 325 (quoting *Berkemer*, 468 U.S. at 440).

98. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (citations omitted).

99. *Yarborough v. Alvarado*, 124 S. Ct. 2140, 2149 (2004) (“Finally, in *Thompson v. Keohane* . . . the Court offered the following description of the *Miranda* custody test.”).

100. *Id.* at 2144-52.

101. *Rhode Island v. Innis*, 446 U.S. 291, 302 (1980).

102. *Id.* After the suspect in *Innis* was placed in the back of a patrol car and advised of his *Miranda* rights, the officers in the front seat made comments that elicited an incriminating response from the suspect. *Id.* at 294-96. The Supreme Court held the comments made by the officers were “not reasonably likely to elicit an incriminating response from [the suspect].” *Id.* at 303.

103. *Dickerson v. U.S.*, 530 U.S. 428, 434-35, 444 (2000). The *Dickerson* Court recognized the voluntariness test is subjective in nature and takes into account the “totality of the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.” *Id.* at 434 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). In *Schneckloth*, the Court outlined:

Some of the factors taken into account have included the youth of the accused . . . his lack of education . . . or his low intelligence . . . the lack of any advice to the accused of his constitutional rights . . . the length of de-

ever, *Innis* addressed the general protections necessary to preserve a suspect's rights under the Fifth and Fourteenth Amendments.¹⁰⁴

Juvenile Status

This section briefly addresses significant precedent concerning juvenile status in relation to the *Miranda* custody test, as it is crucial in analyzing the outcome and significance of this case. Furthermore, it is imperative to evaluate this line of cases to determine if the principles contained therein are "fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond a doubt."¹⁰⁵ If it is determined that treatment of juveniles as established under Fifth and Fourteenth Amendment jurisprudence is sufficiently fundamental, then it can be extended to the *Miranda* context, and Fifth and Fourteenth Amendment juvenile precedent may constitute "clearly established" federal law for the purpose of determining when a *Miranda* warning is required.¹⁰⁶

The Supreme Court first applied *Miranda* to a juvenile suspect in *Fare v. Michael C.*¹⁰⁷ In *Fare*, the Court refused to consider a juvenile's request to speak with his probation officer as the equivalent of evoking one's right to speak with an attorney or as a *per se* request to remain silent.¹⁰⁸ The suspect, then sixteen-and-one-half years old, was taken into custody and escorted to a police station interview room.¹⁰⁹ The suspect was fully advised

tion . . . the repeated and prolonged nature of the questioning . . . and the use of physical punishment such as the deprivation of food or sleep.

Schneckloth, 412 U.S. at 226; see also Petitioner's Brief at 28, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684).

104. *Innis*, 446 U.S. at 297. The *Innis* Court specifically identified and looked to its *Miranda* decision as a "starting point" in formulating its opinion in reference to the questions of voluntariness and whether an interrogation took place: "[i]n its *Miranda* opinion, the Court concluded that in the context of 'custodial interrogation' certain procedural safeguards are necessary to protect a defendant's Fifth and Fourteenth Amendment privilege against compulsory self-incrimination." *Id.*

105. *Alvarado*, 124 S. Ct. at 2151. The Court in its opinion briefly alluded to the concept that under § 2254(d)(1) even though the Court's prior opinions have not directly addressed this specific issue, it may be permissible to extend a well-established principle and apply it to a new factual setting. *Id.*

106. *Id.*

107. *Fare v. Michael C.*, 442 U.S. 707 (1979).

108. *Id.* at 719-23.

109. *Id.* at 710. The juvenile suspect was questioned as follows:

Q. Do you want to give up your right to have an attorney present here while we talk about it? A. Can I have my probation officer here? Q. Well I can't get a hold of your probation officer right now. You have the right to an attorney. A. How [sic] I know you guys won't pull no police officer in and tell me he's an attorney?

Id.

of his *Miranda* rights.¹¹⁰ When asked if he wanted to give up his right to have his attorney present during the interview, the suspect requested to have his probation officer present.¹¹¹ Although the Court ultimately denied giving special consideration to the request of the juvenile suspect, the Court held that juvenile status would be taken into consideration when evaluating the totality of the circumstances analysis.¹¹²

In *Haley v. Ohio*, the Supreme Court drew a broader conclusion regarding the need to provide greater protections for juveniles under the Fourteenth Amendment's Due Process Clause.¹¹³ Prior to the explicit protections provided by *Miranda*, the Court recognized the need to protect individuals from the evils of coercive interrogation, as it may contravene the requirements of the Fourteenth Amendment and due process, especially when a child is involved.¹¹⁴ In *Haley*, a fifteen-year-old boy was suspected of murdering a storeowner.¹¹⁵ The boy was arrested and brought to jail after midnight, then questioned by five or six police officers for approximately five hours and was never advised of his right to counsel.¹¹⁶ At approximately 5:00 a.m. the boy signed a confession, and then was held incommunicado from both his lawyer and his mother for approximately four days.¹¹⁷ The trial court found his confession to be voluntary.¹¹⁸ However, the Supreme Court found the methods used in obtaining the confession violated the

110. *Id.*

111. *Id.* at 710-11.

112. *Id.* at 725. In *Fare*, the Court clearly stated that juvenile status is relevant when determining if a juvenile has waived his Fifth Amendment rights. The Court stated:

[The] totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Id. See also *Gallegos v. Colorado*, 370 U.S. 49 (1962).

113. *Haley v. Ohio*, 332 U.S. 596 (1948).

114. *Id.* at 599-601. The *Haley* decision was handed down nearly twenty years prior to the Court's clear announcement of the protections afforded in *Miranda*, yet the same concerns emerged: "[t]he Fourteenth Amendment prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them." *Id.* at 601.

115. *Id.* at 597-98.

116. *Id.* at 598.

117. *Id.*

118. *Id.* at 599 ("The trial court . . . allowed it to be admitted in evidence over petitioner's objection that it violated his rights under the Fourteenth Amendment. The court instructed the jury to disregard the confession if it found that he did not make the confession voluntarily and of his free will.")

child's constitutional rights.¹¹⁹ The Court identified the relevance of the suspect's age when evaluating the circumstances surrounding interrogations:

[W]hen . . . a mere child—an easy victim of the law—is before us, *special care* in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.¹²⁰

In *Gallegos v. Colorado*, a fourteen year-old boy was arrested and held incommunicado in a Juvenile Hall for seven days prior to signing a “formal confession.”¹²¹ The *Gallegos* Court evaluated specific factors when determining whether the environment created was coercive to the degree as to render the confession inadmissible, such as the length of questioning, the use of fear, and the age of the suspect.¹²² The Court focused heavily on the age of the suspect making numerous references to the child's age and cognitive abilities.¹²³ The *Gallegos* Court recognized the juvenile suspect was apprised of his rights but went on to conclude:

[A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police [W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protest his own interests or how to get the benefits of his constitutional rights.¹²⁴

Due in large part to the youth of the suspect, the Supreme Court determined the confession “was obtained in violation of due process.”¹²⁵

Before *Alvarado*, both state and federal courts tackled the issue of juvenile status in relation to the *Miranda* custody test and have taken the individual's age into consideration by either modifying the reasonable person standard or when evaluating the circumstances surrounding the interro-

119. *Id.*

120. *Id.* at 599 (emphasis added).

121. *Gallegos v. Colorado*, 370 U.S. 49, 50 (1962) (“After petitioner's arrest January 1 . . . his mother tried to see him on . . . January 2, but permission was denied From January 1 through January 7, petitioner was kept in Juvenile Hall, where he was kept in security.”).

122. *Id.* at 52-53.

123. *Id.* at 52-55.

124. *Id.* at 54.

125. *Id.* at 55.

gation.¹²⁶ However, the Supreme Court had never required age to be considered in the *Miranda* custody test.¹²⁷

PRINCIPAL CASE

In *Alvarado*, the United States Supreme Court considered whether the state court's determination that Michael Alvarado was not in custody was an unreasonable application of clearly established federal law.¹²⁸ Justice Kennedy, writing for the majority, began the opinion by outlining the relevant "clearly established" law concerning the *Miranda* custody test.¹²⁹ The Court first looked to *Miranda*, which held that preinterrogation warnings must be given prior to a custodial interrogation.¹³⁰ Next, the majority evaluated *Oregon v. Mathiason*, in which the Court held an individual is in custody if "the questioning took place in a context where [the suspect's] freedom to depart was restricted in any way."¹³¹

The Court then addressed *California v. Beheler*, a case with facts nearly indistinguishable from *Mathiason*.¹³² Accordingly, the *Beheler* Court concluded the suspect was not in custody.¹³³ As the majority opinion recognized, the knowledge of the police officer about the suspect was irrelevant to the custody inquiry.¹³⁴ The majority then addressed two more recent cases in which the Court established that lower courts must examine all of the circumstances surrounding an interrogation and then decide how a "reasonable person" in like circumstances would gauge his or her freedom of move-

126. Respondent's Brief at 25-27, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684); see, e.g., *People v. T.C.*, 898 P.2d 20, 25 (Colo. 1995) (ruling that in addition to the totality-of-the-circumstances test, a trial court may also consider whether the suspect's parents were present during the interrogation). It is significant to note that Petitioner did not dispute this finding but simply rebutted it by stating that although both federal and state courts have concluded as much, the Supreme Court has never made such a finding in its *Miranda* precedent. Petitioner's Brief at 28, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684).

127. *Yarborough v. Alvarado*, 124 S.Ct. 2140, 2151 (2004) ("Our opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration.").

128. *Id.* at 2149.

129. *Id.* at 2147. The Court cited *Williams*' explanation of "clearly established" law as "holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decisions." *Id.* (citing *Williams v. Taylor*, 529 U.S. 362, 412 (2000)). Significant to the analysis of this case is the Court's recognition that the "governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision" are what constitute the relevant "clearly established law." *Id.* (citing *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003)).

130. *Id.* at 2147.

131. *Id.* at 2147-48 (citing *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)). See *supra* notes 79-80 and accompanying text.

132. *Id.* at 2148. See *California v. Beheler*, 463 U.S. 1121 (1983).

133. *Alvarado*, 124 S. Ct. at 2148.

134. *Id.*

ment.¹³⁵ It was in these cases that the Court emphasized the objective rather than subjective nature of the *Miranda* custody test.¹³⁶ Finally, the Court identified that *Thompson v. Keohane* set forth the most recent and controlling test regarding the *Miranda* custody issue.¹³⁷

Having identified the “clearly established” relevant law concerning the case at issue, the majority ascertained whether the state court’s findings involved an “unreasonable application” of that law.¹³⁸ The Court determined the *Miranda* custody test is general in nature and therefore affords lower courts more leeway in their adjudication of issues in this area of law.¹³⁹ Interestingly, the Court momentarily set aside the “deferential” standard of § 2254 and approached the facts from the perspective of “fair minded jurists.”¹⁴⁰ The Court noted facts weighing both in favor and against finding that Alvarado was in custody.¹⁴¹ The majority then concluded that reasonable minds could differ as to whether Michael Alvarado was in custody.¹⁴² Therefore, under § 2254’s deferential standard, the Court concluded it was not unreasonable for the state court to conclude Alvarado’s interview was noncustodial.¹⁴³

The Supreme Court briefly addressed the Ninth Circuit’s conclusion that the state court’s refusal to consider Alvarado’s age and inexperience constituted a failure to extend a clearly established legal principle.¹⁴⁴ In ad-

135. *Id.* at 2148-49. See *Berkemer v. McCarty*, 468 U.S. 420 (1984); *Stansbury v. California*, 511 U.S. 318 (1994).

136. *Alvarado*, 124 S. Ct. at 2148-49.

137. *Id.* at 2149. See *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (explaining the two part inquiry: “first, what were the circumstances surrounding the interrogation; second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave”).

138. *Alvarado*, 124 S. Ct. at 2149.

139. *Id.*

140. *Id.*

141. *Id.* at 2149-50. First, the Court cited the following facts weighing against finding Alvarado was in custody: The police did not transport Alvarado to the police station; the police did not place him under arrest; Alvarado’s parents remained in the lobby which suggested the interview would be brief; Alvarado was told the interview was going to be brief; the focus of the interview was Soto’s crimes; the detective did not threaten Alvarado but rather appealed to his sense of honesty; finally, at the end of the interview Alvarado went home. *Id.* Factors which the Court found weighed in favor of finding Alvarado was in custody were as follows: The interview lasted two hours; he was not told he was free to leave; Alvarado was brought to the police station by his legal guardians; finally, Alvarado’s counsel alleged that his parents were rebuffed from attending the interview. *Id.* at 2150. Michael Alvarado’s age, which would weigh in favor of finding him in custody, is conspicuously absent. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* at 2150-51. The *Alvarado* Court summarized the Ninth Circuit’s decision as follows:

addressing the § 2254(d)(1) extension analysis, the Court agreed with the petitioners, that if one must extend a rationale, it cannot be clearly established at the time of the state court's decision.¹⁴⁵ However, the *Alvarado* Court did note "[c]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond a doubt."¹⁴⁶ The majority recognized, when addressing the *Miranda* custody test, the Court's past opinions did not mention the necessity of considering a suspect's age.¹⁴⁷ The Court went on to note if law enforcement officers were required to consider a suspect's age, it could be perceived as turning the objective *Miranda* custody test into a subjective test.¹⁴⁸ The majority concluded its analysis by stating that even under a *de novo* review of the facts, police officers should not be expected to consider a suspect's past experience with law enforcement because the inquiry turns "too much on the subjective state of mind of the suspect and not enough on the 'objective circumstances of the interrogation.'"¹⁴⁹ Accordingly, the Supreme Court concluded the state court considered "the proper factors and reached a reasonable conclusion."¹⁵⁰

Concurring Opinion

Justice O'Connor joined the opinion of the Court; however, she stated there might be cases concerning the *Miranda* custody test where a suspect's age is relevant.¹⁵¹ Nevertheless, because *Alvarado* was almost

The Court of Appeals reached the opposite result by placing considerable reliance on Alvarado's age and inexperience with law enforcement According to the Court of Appeals, however, our Court's emphasis on juvenile status in other contexts demanded consideration of Alvarado's age and inexperience here. The Court of Appeals viewed the state court's failure to "extend a clearly established legal principle [of the relevance of juvenile status] to a new context" as objectively unreasonable in this case requiring issuance of a writ [of habeas corpus].

Id. (internal quotation marks omitted) (quoting *Alvarado v. Hickman*, 316 F.3d 841, 853 (9th Cir. 2002)).

145. *Id.* at 2151.

146. *Id.* The *Alvarado* Court did not apply the "fundamental principles" analysis because their "opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration," thus the concept was not so fundamental as to require extension. *Id.* The Court was also concerned that considering age in the custody test would change the objective nature of the test: "[t]here is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience." *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 2152 (quoting *Stansbury v. California*, 511 U.S. 318, 323 (1994)).

150. *Id.*

151. *Id.* (O'Connor, J., concurring).

eighteen, this was not such a case.¹⁵² Justice O'Connor noted that it is difficult for police officers to recognize when an individual is a minor.¹⁵³ Furthermore, even when police officers do know a suspect's age, it is difficult for them to ascertain the effect age will have on the individual's perception about his or her freedom to leave an interview.¹⁵⁴ In sum, the state court's failure to consider Alvarado's age was not an unreasonable application of well-established federal law.¹⁵⁵

Dissenting Opinion

Justice Breyer delivered the dissenting opinion.¹⁵⁶ He focused on the specific facts surrounding Alvarado's interrogation and asked, "[w]ould a reasonable person in Alvarado's position have felt free simply to get up and walk out of the small room in the station house at will during his 2-hour police interrogation?"¹⁵⁷ Using the second prong of the *Thompson* test, the dissent concluded that when focusing on the actions of the police, a reasonable person in Alvarado's position would conclude that he was not free to leave.¹⁵⁸

Concerning juvenile status, the dissent argued the majority was pretending Alvarado was a statistically average person, something he was not.¹⁵⁹ The dissenting opinion also noted the "reasonable person" standard might account for personal characteristics of the individual, such as age.¹⁶⁰ In his opinion, Justice Breyer recognized that the "reasonable person" was interjected into the *Miranda* custody test in an effort to ensure it remains an objective test.¹⁶¹ The dissent clearly stated Alvarado's youth was an objective factor of which the police were aware.¹⁶² It also noted that failing to consider such a factor "would produce absurd results, the present instance being

152. *Id.* (O'Connor, J., concurring). Justice O'Connor stated, "[i]n this case, however, Alvarado, was almost 18 years old at the time of his interview. It is difficult to expect police to recognize that a suspect is a juvenile when he is so close to the age of majority." *Id.* (O'Connor, J., concurring).

153. *Id.* (O'Connor, J., concurring).

154. *Id.* (O'Connor, J., concurring).

155. *Id.* (O'Connor, J., concurring) ("Given these difficulties, I agree that the state court's decision cannot be called an unreasonable application of federal law simply because it failed explicitly to mention Alvarado's age.").

156. *Id.* (Breyer, J., dissenting). Justices Stevens, Souter, and Ginsburg joined Justice Breyer's dissent.

157. *Id.* at 2153 (Breyer, J., dissenting).

158. *Id.* (Breyer, J., dissenting).

159. *Id.* at 2155 (Breyer, J., dissenting) (citing U.S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States: 2003 (123d ed.) (finding the average person is a working, married, thirty-five-year-old white female with a high school degree)).

160. *Id.* (Breyer, J., dissenting). Justice Breyer noted that personal characteristics are taken into consideration in other areas of law such as tort law. *Id.* (Breyer, J., dissenting).

161. *Id.* (Breyer, J., dissenting).

162. *Id.* (Breyer, J., dissenting).

a case in point.”¹⁶³ Justice Breyer also stated, “a court must carefully ‘examine all of the circumstances surrounding the interrogation.’”¹⁶⁴ He insisted when this is done the facts weighed strongly in favor of finding that Alvarado was in custody.¹⁶⁵ The dissent concluded its analysis by stating that common sense and an understanding of the purpose of the law in this area leads one to conclude that age is relevant to the custody inquiry.¹⁶⁶

ANALYSIS

The decision in *Alvarado* is significant for two reasons. First, the Court failed to clarify whether it is permissible under 28 U.S.C. § 2254(d)(1) to extend clearly established principles of law to a new context. In doing so, the Court left federal habeas courts with great uncertainties when handling § 2254 writs of habeas corpus. Second, the decision may be seen as diminishing the increased protections that have traditionally been afforded to juveniles. As a result, this decision will likely encourage the abuse of juveniles by law enforcement, something the Supreme Court and legislatures have attempted to avoid.

The Effect of § 2254 on the Court's Decision

As previously stated, this case was heard under a deferential standard of review.¹⁶⁷ Therefore, the Court's habeas decisions may be considered to have diminished precedential value.¹⁶⁸ However, the tone of the ma-

163. *Id.* (Breyer, J., dissenting).

164. *Id.* at 2156 (Breyer, J., dissenting) (quoting *Stansbury v. California*, 511 U.S. 318, 322, 325 (1994)).

165. *Id.* (Breyer, J., dissenting).

166. *Id.* (Breyer, J., dissenting).

167. *Williams v. Taylor*, 529 U.S. 362, 411 (2000); see also Adam N. Steinman, *Reconceptualizing Federal Habeas Corpus For State Prisoners: How Should AEDPA's Standard of Review Operate After Williams v. Taylor?*, 2001 WIS. L. REV. 1493, 1507 (2001) (noting “[e]ven if the state court ruling is incorrect—that is, even if a federal court exercising independent judgment would reach a different conclusion—federal habeas relief is available only if the state court’s application of established Supreme Court law is unreasonable”). After the Supreme Court’s interpretation of the AEDPA in *Williams v. Taylor*:

[A] federal court is no longer free to grant habeas relief based solely on its independent interpretation and application of federal law. Under the provision of AEDPA codified at 28 U.S.C. 2254(d)(1), a federal court presented with a habeas petition *must defer* to a state court’s rejection of a petitioner’s federal law claim unless the state court’s “decision” is “contrary to, or involved an unreasonable application of, clearly established Federal law.”

Id. (emphasis added).

168. Deborah W. Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What it Says About Us*, 63 OHIO ST. L.J. 63, 72-73 (2002) (noting a case may be seen as having diminished precedential value if the court deferred to the state’s legislature).

majority's decision made it clear that to require law enforcement to consider age in the context of a *Miranda* custody inquiry would change the very nature of the test, and is therefore not permissible.¹⁶⁹

The Supreme Court did not clarify the "unreasonable application" clause of § 2254(d)(1), specifically, whether failing to extend a legal principle to a new context is an "unreasonable application" of clearly established precedent.¹⁷⁰ The Court first addressed this issue in *Williams v. Taylor*, and simply noted that this is "perhaps" the correct interpretation of the statute.¹⁷¹ The *Lockyer* Court appeared to affirm the holding in *Williams* when it stated "[s]ection 2254(d)(1) permits a federal habeas court to grant relief based on the application of a governing legal principle to a set of facts different from those of the cases in which the principle was announced."¹⁷² However, the *Alvarado* Court muddied the waters of the extension analysis.¹⁷³

It agreed with the petitioner's argument that "if a habeas court must extend a rationale before it can apply to the facts at hand then the rationale cannot be clearly established at the time of the state court decision."¹⁷⁴

169. *Alvarado*, 124 S. Ct. at 2151-52 ("The *Miranda* custody inquiry is an objective test . . . [T]he custody inquiry states an objective rule designed to give clear guidance to police, while consideration of a suspect's individual characteristics—including his age—could be viewed as creating a subjective inquiry."). In reference to *Alvarado*'s prior interrogation history, the majority stated if the Court were reviewing the case under a *de novo* standard, it would have reached the same conclusion under § 2254. *Id.* at 2152.

170. *Id.* at 2150-51 (demonstrating the case at issue could have potentially turned on whether extension was permissible). The Ninth Circuit's application of the extension analysis under § 2254 provides evidence that lower federal courts may be misinterpreting the statute if the extension of fundamental principles of law to a different context is determined to be improper by the Supreme Court. See *Alvarado v. Hickman*, 316 F.3d 841, 853 (2002); see, e.g., *Otero v. Eisenschmidt*, 01 Civ. 2562, 2004 U.S. Dist. LEXIS 22439, at *55; 2004 WL 2504382, at *17 (S.D.N.Y. Nov. 8, 2004) (citing to *Alvarado* as precedent supporting the viability of § 2254's "extension analysis").

171. *Williams v. Taylor*, 529 U.S. 362, 408 (2000); see also Jude Obasi Nkama, Note, *The Great Writ Encumbered by Great Limitations: Is the Third Circuit's Notice Requirement for Habeas Relief a Structural Bias Against "Persons in Custody?"*, 26 SETON HALL LEGIS. J. 181, 203-04 (2001). In *Williams v. Taylor* the U.S. Supreme Court appeared to accept that a

[S]tate court can "unreasonably apply" federal law when a state court applies the correct legal rule unreasonably to a particular set of facts or when the state court either unreasonably broadens the scope of a legal principle to cover a new set of facts or *unreasonably refuses to broaden such a principle to cover a new situation where it should apply*.

Id. (emphasis added).

172. *Lockyer v. Andrade*, 583 U.S. 63, 76 (2003) (emphasis added).

173. *Alvarado*, 124 S. Ct. at 2150-51 (giving weight to conflicting arguments advocating and condemning the extension analysis under § 2254).

174. *Id.* at 2150. The Court contended petitioner's analysis was correct and went on to state "[t]here is force to this argument. Section 2254(d)(1) would be undermined if habeas courts introduced rules not clearly established under the guise of extensions to existing law." *Id.* at 2151.

However, in the same paragraph the Court stated "the difference between applying a rule and extending it is not always clear," and there will be some situations where it will be obvious that a rule must be extended.¹⁷⁵ Ultimately, the Court offered no guidance in relation to the test to be applied in determining whether a principle is so fundamental in the context of juvenile justice as to warrant being extended to other factual settings.¹⁷⁶

The confusion surrounding the *Alvarado* Court's analysis of § 2254(d)(1) arises because the Court's holding turned on the conclusion that to incorporate age into the custody test would fundamentally change the nature of the inquiry from objective to subjective.¹⁷⁷ Furthermore, it was for this reason the Court concluded the consideration of juvenile status may not be extended to the custody test.¹⁷⁸

Affording Greater Protections to Juveniles is a Fundamental Principle of Law

Although the majority did little to clarify the viability of the extension prong under § 2254(d)(1), it did state that "[c]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt."¹⁷⁹ The majority very quickly concluded however, that the case at issue was "not such a case."¹⁸⁰ Traditionally, the Court has defined a fundamental principle as one "so rooted in the traditions and conscience of the American people as to be ranked as fundamental."¹⁸¹ In essence, the Court concluded the legal principle of providing increased protection to juveniles is not sufficiently fundamental to warrant application to a new factual setting.¹⁸² This rationale is flawed and produces illogical results as evidenced by the *Alvarado* case, in which a boy was held to the same standard as an adult.¹⁸³ Furthermore, providing increased protections to juveniles is a fundamental principle acknowledged by the legal system, which deserves special consideration.¹⁸⁴ This conclusion is

175. *Id.*

176. *Id.* (simply stating "[t]his is not such a case, however").

177. *Id.*

178. *Id.* ("There is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience.")

179. *Id.* at 2150-51.

180. *Id.* at 2151. The majority appeared to bypass this analysis because in its opinion to consider age would alter the nature of the *Miranda* custody test. *Id.* at 2151-52.

181. *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). See also *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989).

182. *Alvarado*, 124 S. Ct. at 2151.

183. *Id.* at 2155 (Breyer, J., dissenting) ("And to say that courts should ignore widely shared, objective characteristics, like age, on the grounds that only a (large) minority of the population possesses them would produce absurd results, the present instance being a case in point.")

184. *Alvarado v. Hickman*, 316 F.3d 841, 853 (9th Cir. 2002) (finding "[t]he relevant legal principle here, amply supported by Supreme Court precedent, is that juvenile defendants are

supported by past Supreme Court decisions, the treatment of juveniles in tort and contract law, and by both state and federal court precedent.¹⁸⁵

In *Haley v. Ohio*, the Supreme Court clearly recognized the need to provide juveniles with greater protections, particularly in a law enforcement setting.¹⁸⁶ The Court recognized that a different standard must be used when determining whether a child has voluntarily given a confession.¹⁸⁷ Justice Frankfurter, in his concurring opinion, contended that the pressures placed on “a lad of fifteen” to illicit a confession were so severe as to deprive him of his Constitutional right to remain silent, and therefore, his confession was inadmissible.¹⁸⁸ Furthermore, he went on to state that “such a finding . . . reflects those *fundamental* notions of fairness and justice”¹⁸⁹ The majority in *Haley* was clearly concerned with the suspect’s juvenile status, as it made mention of it not less than seventeen times in an ten page opinion.¹⁹⁰

In *Gallegos v. Colorado*, the Supreme Court reiterated the principle that a juvenile “cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his confession.”¹⁹¹ This statement by the Court leads to only one logical conclusion: Greater care

accorded heightened procedural safeguards commensurate with their age and experience”); see *Roper v. Simmons*, 125 S. Ct. 1183, 1195 (2005) (recognizing the general differences between juveniles under eighteen and adults); see also Robert E. McGuire, Note, *A Proposal to Strengthen Juvenile Miranda Right: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355, 1357-60 (2000) (noting “the Court recognized that juveniles in custody need at least the same constitutional protections that adults enjoy and possibly more . . . constitutional safeguards must be tailored to the specific characteristics of children in order to ensure that their constitutional rights are protected at the same level as adults”).

185. *Haley v. Ohio*, 332 U.S. 596 (1948); *Gallegos v. Colorado*, 370 U.S. 49 (1962); *In re Gault*, 387 U.S. 1 (1967); *Fare v. Michael C.*, 442 U.S. 707 (1979); *Charbonneau v. Macrury*, 153 A. 457, 460 (N.H. 1931) (noting in tort law “[t]he standard of conduct required of such a child is that which it is reasonable to expect of children of like age, intelligence and experience”); RESTATEMENT (SECOND) OF CONTRACTS § 14 (1981) (stating “[u]nless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person’s eighteenth birthday”); *Alvarado v. Hickman*, 316 F.3d 841, 850-51 (9th Cir. 2002) (noting every state court that has addressed age in relation to the custody test has found it to be relevant). Under § 2254(d)(1) only the Supreme Court’s decisions are relevant, however, other sources may support the proper interpretation of such decisions. *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (noting clearly established law refers to the holdings as opposed to the dicta of the Supreme Court’s decisions); *but see Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 890 (3d Cir. 1999) (stating “in certain cases it may be appropriate to consider the decisions of inferior federal courts as helpful amplifications of Supreme Court precedent”).

186. *Haley v. Ohio*, 332 U.S. 596, 599 (1948).

187. *Id.* (stating a child “cannot be judged by more exacting standards of maturity”).

188. *Id.* at 606-607 (Frankfurter, J., concurring).

189. *Id.* at 607 (Frankfurter, J., concurring) (emphasis added).

190. *Id.* at 597-607. The Court in *Gallegos v. Colorado* recognized “[t]he youth of the suspect was the crucial factor in *Haley v. Ohio*.” *Gallegos v. Colorado*, 370 U.S. 49, 53 (1962).

191. *Id.* at 54.

must be given when protecting a juvenile's rights under the Fifth and Fourteenth Amendment.¹⁹² More recently in *Fare v. Michael C.*, the Court once again recognized there are "special concerns that are present when young persons, often with limited experience and education and with immature judgment are involved."¹⁹³

As previously stated, state and federal courts that have squarely addressed the issue of juvenile status in relation to the *Miranda* custody test have considered age as a factor in either the "totality of the circumstances test or by way of modification to the reasonable person standard."¹⁹⁴ It is logical to conclude the lower courts have taken the previously mentioned Supreme Court decisions as a mandate, providing increased protections to juveniles as a fundamental legal principle that must be considered in the *Miranda* custody test.¹⁹⁵ It would appear from the overwhelming consensus found among the lower courts that the United States Supreme Court has misconstrued its own precedent.¹⁹⁶

Other areas of law provide minors with greater protections as well. First, tort law has evolved to hold children only to that standard of care which may be expected from children of a similar age and circumstance.¹⁹⁷

192. Adam Mizock, *Questioning the Rights of Juvenile Prisoners During Interrogation*, 49 CLEV. ST. L. REV. 17, 29 (2001) ("In cases involving juveniles, the public policy argument for a broader reading of *Miranda* . . . is even stronger than that for adults.").

193. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (determining that juvenile status must be considered in the totality-of-the-circumstances test when evaluating whether a statement was made voluntarily); see also *In re Gault*, 387 U.S. 1, 55 (1967) (stating "the greatest care must be taken to assure that [a minor's] admission was voluntary").

194. Respondent's Brief at 25-27, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684).

195. *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002). The case at issue provides evidence that lower federal courts may logically conclude prior Supreme Court decisions have established that protection of juveniles is a fundamental principle of law. *Id.* at 843. See 18 U.S.C. § 5033 (2000). The federal legislature has codified special protections which are afforded to juveniles:

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

Id.

196. *A.M. v. Butler*, 360 F.3d 787, 797 (7th Cir. 2004) (noting "every jurisdiction that has squarely addressed the issue, moreover, has ruled that juvenile status is relevant").

197. MATHEW BENDER, 7-28 PERSONAL INJURY—ACTIONS, DEFENSES, DAMAGES § 9 (2005) ("A child is generally responsible for his negligent acts, but the standard or duty of care that he owes is not the adult objective standard of care."); see *Charbonneau v. Macrury*, 153 A. 457, 460 (N.H. 1931) ("The standard of conduct required of such a child is that which

This area of law recognizes the impropriety of holding a child to the same standard as an adult where traditionally only monetary loss was at stake.¹⁹⁸ This same logic is more important in the criminal law setting as the child stands to be deprived of his liberty.¹⁹⁹

Second, contract law recognizes that minors are likely to lack the necessary judgment to protect themselves and therefore require increased protections under the law.²⁰⁰ Once again, this belief is driven by the logical policy consideration that juveniles are susceptible to exploitation by unscrupulous adults.²⁰¹ Therefore, juveniles are usually afforded the opportunity to void most contracts made prior to their eighteenth birthday.²⁰²

Based on the previously mentioned Supreme Court precedent, juvenile treatment in other areas of law, and decisions of state and federal courts that have addressed juvenile status in the *Miranda* custody test, one cannot resist questioning the majority decision in *Alvarado*.²⁰³ These sources affirm that providing juveniles with increased protection is "rooted in the traditions and conscience of [the American] people," and is therefore a fundamental principle of law.²⁰⁴ Accordingly, the Ninth Circuit was correct to extend this fundamental principle of law to the *Miranda* context.²⁰⁵

it is reasonable to expect of children of like age, intelligence and experience."); see also *McGregor v. Marini*, 256 So. 2d 542, 543 (Fla. Dist. Ct. App.1972) ("[T]he standard by which the law measures the conduct of a minor over six years of age is that level of care which could reasonably be expected from a child of like age, intelligence, experience, and training.").

198. RESTATEMENT (SECOND) OF TORTS § 464 (1965).

199. U.S. CONST. amend. XIV (stating "nor shall any State deprive any person of life, liberty, or property, without due process of law"); see also Sarah Kellog, *The Due Process Right to a Safe and Humane Environment for Patients in State Custody: The Voluntary/Involuntary Distinction*, 23 AM. J.L. & MED. 339, 348 (noting the deprivation of an individual's liberty triggers due process protections).

200. RESTATEMENT (SECOND) OF CONTRACTS § 14 (1981).

201. *Dodson v. Schrader*, 824 S.W.2d 545 (Tenn. 1992) (recognizing the purpose of the rule is to ensure crafty adults do not take advantage of vulnerable minors).

202. RESTATEMENT (SECOND) OF CONTRACT § 14 (1981).

203. *Alvarado*, 124 S. Ct. at 2155 (Breyer, J., dissenting) (noting the majority failed to point to any cases suggesting age could not be considered in the *Miranda* custody test).

204. *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) (defining fundamental principles as those principles "rooted in the traditions and conscience of [the American] people"). See also *Hebert v. Louisiana*, 272 U.S. 312, 316-17 (1926) ("[F]undamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land.'").

205. *Alvarado*, 124 S. Ct. at 2150; see also *A.M. v. Butler*, 360 F.3d 787, 797 (7th Cir. 2004). In *Butler*, the United States Court of Appeals for the Seventh Circuit followed the Ninth Circuit's reasoning in *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002). *Id.* It concluded under the unreasonable application prong of § 2254 the Appellate Court of Illinois' finding was objectively unreasonable for failing to consider age a relevant factor in the *Miranda* custody inquiry. *Id.* ("[W]e see no valid reason why a similar analysis should not

Options in Recognizing Juvenile Status as a Factor in the Miranda Custody Test

In *Alvarado*, the Court never directly addressed the issue of whether juvenile status is so fundamental as to warrant special treatment.²⁰⁶ The Court very quickly and prematurely stated there “is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience. The *Miranda* custody inquiry is objective.”²⁰⁷ The majority reasoned that allowing age to be considered would change the very nature of the test.²⁰⁸ This reasoning is flawed because considering age simply does not create a subjective test, as age is an objective factor easily incorporated into the reasonable person test.²⁰⁹

The Court had numerous viable options to consider age as a relevant factor in the *Miranda* custody inquiry. One option is the modification of the “reasonable person” standard.²¹⁰ The test should be “would a reasonable juvenile aged ___ years have felt he or she was not at liberty to terminate the interrogation and leave?”²¹¹ This test would fit squarely under the second prong of the two-part standard for determining whether a suspect is in custody, as announced in *Thompson v. Keohane*.²¹² Tort law readily uses a modified “reasonable person” standard as an objective test.²¹³ The test remains objective because the individual characteristics are not considered; rather, the standard is that of a reasonable person of the same age.²¹⁴ Furthermore, this standard is readily workable because “there is a wide basis of community experience upon which it is possible, as a practical matter, to determine what is to be expected of [minors].”²¹⁵ Failing to modify the “rea-

apply equally to an ‘in custody’ determination. Every jurisdiction that has squarely addressed the issue, moreover, has ruled that juvenile status is relevant.”)

206. *Alvarado*, 124 S. Ct. at 2151.

207. *Id.*

208. *Id.*

209. *Id.* at 2155 (Breyer, J., dissenting) (noting the “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”).

210. *Alvarado v. Hickman*, 316 F.3d 841, 848 (9th Cir. 2002) (noting the defendant, *Alvarado*, seemed to adopt an “age-modified objective standard”).

211. *Evans v. Montana*, 995 P.2d 455, 459 (Mont. 2000) (holding “[a] reasonable fourteen-year-old being questioned about the death of a child under these circumstances would surely not have felt free to leave”).

212. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (“Would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.”).

213. *Alvarado*, 124 S. Ct. at 2155 (Breyer, J., dissenting) (noting all American jurisdictions consider age when determining whether an individual was negligent).

214. RESTATEMENT (SECOND) OF TORTS § 283A (1965) (“If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances.”). See *Camerlick v. Thomas*, 312 N.W.2d 260, 268 (Neb. 1981).

215. RESTATEMENT (SECOND) OF TORTS § 283A (1965).

sonable person" standard may produce illogical results.²¹⁶ The majority advocated a test that holds children of all ages to the same standard as an adult.²¹⁷ Justice O'Connor in her concurring opinion seemed to recognize this was a likely scenario and therefore stated "[t]here may be cases in which a suspect's age will be relevant to the *Miranda* 'custody' inquiry."²¹⁸ However, the majority's rejection of age as a relevant factor has ensured this scenario will take place to the detriment of a child.²¹⁹

Rather than modify the "reasonable person" standard, the Court could have held that age must be considered when evaluating the circumstances surrounding an interrogation.²²⁰ This approach would fit directly under the first prong of the two-part standard for determining whether a suspect is in custody, as announced in *Thompson v. Keohane*.²²¹ Since age is a relevant factor in the ultimate admissibility of a statement, requiring its consideration in the custody context would not create an additional burden, and for the reasons previously discussed, would not create a subjective test.²²²

The facts of the case at issue overwhelmingly point to the conclusion that Detective Comstock was aware Alvarado was a juvenile.²²³ As a result, the Court had the opportunity to hand down a more limited decision.²²⁴ First, the Court could have reasoned that because the detective knew the suspect's age it became an objective factor to be considered.²²⁵ To conclude otherwise would seem to contradict the Court's decision in *Rhode Is-*

216. *Alvarado*, 124 S. Ct. at 2155 (Breyer, J., dissenting) (recognizing if age is not considered as a factor in the custody inquiry "absurd results" will be reached).

217. *Id.* (noting the statistically average American is thirty-five years old).

218. *Id.* at 2152 (O'Connor, J., concurring).

219. *Alvarado v. Hickman*, 316 F.3d 841, 855 (9th Cir. 2002) (holding if age was considered in the custody test the suspect would have been deemed in custody, and as a result because the detective failed to provide a *Miranda* warning the incriminating statement would be inadmissible); see also *National Criminal Justice Reference Services: Juvenile Arrests 2002*, available at <http://virlib.ncjrs.org/Statistics.asp> (last visited Apr. 21, 2005) (noting "[i]n 2002, law enforcement agencies in the United States made an estimated 2.3 million arrests of persons under age 18. According to the Federal Bureau of Investigation (FBI), juveniles accounted for 17% of all arrest and 15% of all violent crime arrests in 2002").

220. *State v. J.Y.*, 623 So. 2d 1232, 1234 (Fla. Dist. Ct. App. 1993) (considering age as a relevant factor in the circumstances surrounding an interrogation, for the purpose of determining if the suspect was in custody).

221. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) ("[W]hat were the circumstances surrounding the interrogation . . ."); see *supra* note 98 and accompanying text.

222. *Alvarado*, 124 U.S. at 2151 (commenting the "suspect's age" may be considered when determining if a statement was made voluntarily); see *supra* note 105 and accompanying text.

223. *Id.* at 2144-47. See *id.* at 2155 (Breyer, J., dissenting) (noting "Alvarado's youth is an objective circumstance that was known to the police"); see also Respondent's Brief at 19, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684) (stating "Comstock knew at the time she summoned Michael to the police station via his parents that he was a seventeen-year-old high school student living with his parents").

224. *Alvarado*, 124 U.S. at 2155.

225. *Id.*

land v. Innis.²²⁶ In *Innis*, the Court reasoned that an officer may not use a suspect's unique susceptibility to elicit a confession.²²⁷ The majority's failure to require the consideration of even a known objective fact does nothing but encourage the abuse of such knowledge in an environment that is coercive by nature.²²⁸

In what would have been a more sweeping decision, the Court logically could have held that age is always relevant in relation to the *Miranda* custody test.²²⁹ Instead the majority concluded that to require a law enforcement officer to actively seek out an individual's age would impose a greater burden on the officer and confuse a clear objective test.²³⁰ Logic would lead one to conclude that in the majority of cases where the suspect is actually being questioned by law enforcement, it is likely the officer will already know the suspect's age, as was the case in *Alvarado*.²³¹ Furthermore, the minimal burden which may be placed on law enforcement officers to ascertain a suspect's age—if it is not visibly apparent the individual is a minor—seems insignificant in comparison to the alternative of pretending the suspect is an adult.²³² After evaluating the alternatives, as a matter of policy, the increased burden should be on the trained, adult law enforcement officer as opposed to the child being questioned.²³³

226. *Rhode Island v. Innis*, 446 U.S. 291 (1980); see *supra* note 102 and accompanying text.

227. *Id.* at 302.

228. *Miranda v. Arizona*, 384 U.S. 436, 457 (1965). See Cookie Ridolfi & Marjorie K. Allard, *The Psychology of Interrogations and Confessions: A Handbook*, by Gisli H. Gudjonsson, 43 SANTA CLARA L. REV. 1485, 1492 (2003) (book review) (noting "how juveniles and those with impaired intellectual functioning are particularly susceptible to psychologically coercive police tactics, and are most likely to be confused by deceptive police interrogation tactics").

229. *Alvarado*, 124 S. Ct. at 2156 (Breyer, J., dissenting) (noting age is relevant to the *Miranda* custody inquiry).

230. *Id.* at 2151-52.

231. *Id.* at 2144-47. See Respondent's Brief at 19, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684).

232. *Alvarado*, 124 S. Ct. at 2156 (Breyer, J., dissenting) ("Unless one is prepared to pretend that Alvarado is someone he is not[,] age should then be considered in the custody inquiry).

233. *Miranda*, 384 U.S. at 455, 456-81 (recognizing the additional burden which may be incurred by law enforcement as a result of the *Miranda* decision; however because of the inherent "evils" surrounding an interrogation atmosphere the safeguards which the Court implemented are necessary). See VICTOR L. STREIB, *DEATH PENALTY FOR JUVENILES* 20 (Indiana University Press 1987). The American legal system has long recognized juveniles must be given special consideration:

[E]ven for the worst offenses by children, legal processes have been followed for more than a century that are markedly less harsh and punitive than those for similar offenses by adults. Attempts are made to protect children during the legal processes and to impose nonpunitive, treatment-oriented sanctions on them for their offenses. . . . [C]hildren or juveniles

In essence, law enforcement officers are already required to consider the age of the suspect, as it is a factor in the totality of the circumstances test used to determine the voluntary nature of a statement and ultimately the admissibility of a statement.²³⁴ Even if a suspect receives a *Miranda* warning prior to making an incriminating statement, if the statement is deemed involuntary under the totality of the circumstances test, the statement will be inadmissible.²³⁵

The Future of Alvarado

Several ramifications will result from the Court concluding age is not a consideration in the *Miranda* custody test. First, the *Alvarado* decision will encourage and enable law enforcement officers to exploit the vulnerability of juveniles.²³⁶ *Miranda* focused largely on a law enforcement officer's ability to create a coercive environment and the extensive training officers receive to elicit a confession.²³⁷ The *Miranda* Court also noted, "the modern practice of in-custody interrogation is psychologically rather than physically oriented."²³⁸ Children, of course, are more psychologically vulnerable than adults.²³⁹ There will be a range of cases in which juveniles will be suscepti-

are treated as a special class, usually separate from the processes and programs for adults. Even though juveniles, just like adults, sometimes commit horrible offenses and sometimes suffer horrible abuses, juvenile offenders and victims are legally, socially, and politically different.

Id.; see also Adam Mizoock, *Questioning the Rights of Juvenile Prisoners During Interrogation*, 49 CLEV. ST. L. REV. 17, 30 (2001) ("The minimal cost of requiring the *Miranda* warnings for interrogations of incarcerated juveniles is justified by the importance of the individuals' rights involved.").

234. *Dickerson v. United States*, 530 U.S. 428, 434 (2000).

235. *Id.* at 444 ("The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry."). See Respondent's Brief at 29, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684) ("Since the suspect's age is already a factor in the ultimate admissibility of any statement, it is not a heavy burden on law enforcement to utilize a reasonable juvenile standard in assessing custody for *Miranda* purposes.").

236. *Miranda*, 384 U.S. at 448-49 (law enforcement manuals "professedly present the most enlightened and effective means to obtain statements through custodial interrogation"); see *supra* note 12 for an explanation of how Detective Comstock may have been utilizing these techniques during *Alvarado*'s interrogation.

237. *Miranda*, 384 U.S. at 448-49.

238. *Id.* at 448.

239. *In re Gault*, 387 U.S. 1, 46 (1967). The Court recognized that a child is extremely vulnerable if he is handled by the police with no regard for his diminished mental capacity:

[W]e cannot believe a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.

Id. See Bruce Frumkin & Alfredo Garcia, *Psychological Evaluations and the Competency to Waive Miranda Rights*, 27 NOV. CHAMP. 12 (2003) ("[P]sychology and the law of confessions

ble to coercion without protection.²⁴⁰ If a child is held to the same “reasonable person” standard as an adult, then a juvenile’s rights will be protected only a fraction of the time.²⁴¹ There are situations where a reasonable adult would feel free to terminate a police interview; however, given an identical fact pattern, where the suspect is a child, he or she may not feel free to leave, nor would a reasonable child of the same age feel free to leave.²⁴² It is these cases where a child’s rights under the Fifth and Fourteenth Amendments may be trampled.²⁴³ Although it is true a child’s age will be considered in the admissibility of the statement, law enforcement officers will have more latitude to elicit a confession from a child without being required to give the juvenile suspect a warning as required by *Miranda*.²⁴⁴ In sum, considering age as a relevant factor would likely require a *Miranda* warning to be given at an earlier time than that of an adult, under the same set of circumstances.²⁴⁵ It would also render inadmissible more confessions by juveniles who were in custody.²⁴⁶ This would, in effect, provide an added protection for juvenile suspects. The Supreme Court’s decision moved this area of law away from the trend of increasing protections surrounding custodial interrogations.²⁴⁷

share a symbiotic relationship Competency to waive these [*Miranda*] rights is problematic in many contexts, but is especially difficult to assess when the suspect is a juvenile”).

240. *Alvarado v. Hickman*, 316 F.3d 841, 853 (9th Cir. 2002) (recognizing a juvenile will not feel free to terminate an interview when under the same circumstances a reasonable adult may).

241. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

242. *Alvarado*, 316 F.3d at 853.

243. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (noting “special concerns” are present when protecting a juvenile’s constitutional rights).

244. *Miranda*, 384 U.S. at 479.

245. *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (recognizing that a child could not withstand an inquisition that “[m]ature men possibly might stand”).

246. *Miranda*, 384 U.S. at 467 (recognizing that a warning is required if the suspect is in custody, or the confession will be inadmissible).

247. COLO. REV. STAT. ANN. § 19-2-511(1) (2003). This statute provides that a child’s in custody confession will be deemed inadmissible unless:

[A] parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and his or her parent, guardian, or legal or physical custodian were advised of the juvenile’s right to remain silent and that any statements made may be used against him or her in a court of law, of his or her right to the presence of an attorney during such interrogation, and of his or her right to have counsel appointed if he or she so requests at the time of the interrogation.

Id. See *People v. Maes*, 571 P.2d 305, 306 (Colo. 1977), where the Colorado Supreme Court identified the purpose of then COLO. REV. STAT. ANN. § 19-2-102 (3)(c)(I), now COLO. REV. STAT. ANN. § 19-2-511(1) (2005):

[T]he clear purpose in enacting (this section) . . . of the Children’s Code is to afford a special protection to a juvenile who is in police custody be-

Second, because of the deferential standard of review under which this case was decided, the Court may justify a future deviation from the precedent it set in *Alvarado*.²⁴⁸ Although the tone of the decision seemed to suggest the standard of review was not dispositive of the Court's holding, the majority left themselves some latitude by making reference to the deference it is required to give the lower court's decision under § 2254(d)(1).²⁴⁹ The Court stated the "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."²⁵⁰ The Court also used the phrases "could be viewed" and "does not provide a proper basis" when describing the lower court's decision.²⁵¹ It would appear from the majority's careful use of these phrases it has left itself a viable out if, in the future, it determines its reasoning in *Alvarado* was not sound.²⁵²

Third, Justice O'Connor was clearly influenced by Michael Alvarado's age at the time the interrogation took place.²⁵³ It seems likely that Justice O'Connor, if faced with another case similar to the one at issue but involving a younger defendant, will follow the dissent's reasoning.²⁵⁴ This

cause of alleged criminal acts. This special protection provides an additional and necessary assurance that the juvenile's Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel will be fully afforded to him.

Maes, 571 P.2d at 306; see also Larry Holz, *Miranda in a Juvenile Setting: A Child's Right to Silence*, 78 J. CRIM. L. & CRIMINOLOGY 534, 535 (1987) (advocating the administration of a modified form of the *Miranda* warning for juveniles).

248. *Williams v. Taylor*, 529 U.S. 362, 411 (2000).

249. *Alvarado*, 124 S. Ct. at 2151-52.

250. *Id.* at 2151 (emphasis added).

251. *Id.* at 2151-52.

252. David B. Sweet, Annotation, *Supreme Court's Construction and Application of Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA) Provision (28 USCS § 2254(d)), Restricting Grant of Federal Habeas Corpus Relief to State Prisoner on Claim Already Adjudicated by State Court on Merits*, 154 L. Ed. 2d 1147 (2005) (recognizing the "state appellate court's failure to consider the suspect's age did not provide a proper basis for finding that the state appellate court's decision was an unreasonable application of clearly established law" whereas the "Federal Court of Appeals' reliance on the suspect's prior inexperience with law enforcement was improper, not only under the deferential-review standard of § 2254(d)(1), but also as a *de novo* matter"). The Court's failure to use the *de novo* language when addressing the relevance of juvenile status may indicate the issue has yet to be settled. See U.S. v. Little, 851 A.2d 1280, 1286 (D.C. 2004) (noting "*Alvarado* did not strictly decide whether an accused's juvenile status is irrelevant to the *Miranda* custody determination").

253. *Alvarado*, 124 S. Ct. at 2152 (O'Connor, J., concurring) ("Alvarado was almost eighteen years old at the time of his interview.").

254. *Id.* (O'Connor, J., concurring) (stating "[t]here may be cases in which a suspect's age will be relevant to the *Miranda* 'custody' inquiry"); see MATHEW BENDER, 2-4 CRIMINAL CONSTITUTIONAL LAW § 4.02 (2004) ("[T]he failure of Justice O'Connor's concurrence to adopt the reasoning of the plurality, and her specific acceptance of the age of a suspect as a relevant factor makes the precedential impact of this case in establishing the 'custody' analysis under *Miranda* unclear.").

would create a 5-4 majority in favor of making age a relevant factor in the *Miranda* custody test.²⁵⁵ Justice O'Connor's opinion adds even more uncertainty to the custody test because it does not clearly delineate when age becomes relevant.²⁵⁶ The age of majority is a bright line rule that provides interested parties with clear and unequivocal evidence of whether the individual should be afforded protections traditionally given to minors.²⁵⁷ There will always be cases that come close to the parameters outlined by a bright line rule.²⁵⁸ However, to promote predictability and fairness, courts must not shy away simply because a fact pattern draws near to the line.²⁵⁹ The age of majority is eighteen years old, not seventeen and one-half years.²⁶⁰ Therefore, under this reasoning Justice O'Connor's opinion is flawed and merely adds another element of uncertainty in the *Miranda* custody inquiry.²⁶¹

Finally, the Court must clearly establish whether extension under § 2254(d)(1) is permissible.²⁶² It is certain that lower habeas courts will face future cases that turn on whether a fundamental principle of law may be applied to a new context.²⁶³ The Supreme Court in *Williams* agreed with the

255. *Alvarado*, 124 S. Ct. at 2152. If Justice O'Connor were to join Justices Breyer, Stevens, Souter and Ginsburg and recognize age as a relevant factor in the custody test, it would create a 5-4 majority over Chief Justice Rehnquist and Justices Kennedy, Scalia and Thomas. *Id.*; see also BENDER, *supra* note 254, § 4.02 (noting "there does appear to be a majority for taking age into account if a case is presented to the Court outside of the limited AEDPA standard of review").

256. *Alvarado*, 124 S. Ct. at 2140, 2152 (O'Connor, J., concurring). Justice O'Connor reasoned that since Michael Alvarado was so close to the age of majority he shouldn't be afforded any additional protections. *Id.* (O'Connor, J., concurring). However she did not give any guidance as to when age would become a relevant factor. *Id.* (O'Connor, J., concurring).

257. VICTOR STREIB, *DEATH PENALTY FOR JUVENILES 20* (Indiana University Press 1987) (stating "we have fixed ages for voting, marrying, leaving school, and driving[.] . . . age eighteen remains the common dividing line between the protected status of juvenile and the punishable status of an adult"); see *Roper v. Simmons*, 125 S. Ct. 1183, 1197 (2005) (the Supreme Court adopted "a categorical rule barring imposition of the death penalty on any offender under 18 years of age").

258. *Roell v. Withrow*, 538 U.S. 580, 596 (2003) (Thomas, J., dissenting) (stating, "[a] bright-line rule brings clarity and predictability, and, in light of the constitutional implications of this case, these values should not be discounted").

259. *Berkemer v. McCarty* 468 U.S. 420, 430 (1984) (recognizing the benefit of giving police clear guidance concerning permissible conduct when interrogating a suspect).

260. 18 U.S.C. § 3509(a)(2) (2000) (defining a child victim as a person under the age of eighteen).

261. See *supra* note 257.

262. *Alvarado*, 124 S. Ct. at 2151 (stating "[s]ection 2254(d)(1) would be undermined if habeas courts introduced rules not clearly established under the guise of extensions to existing law"). This finding directly contradicts the *Lockyer* Court's holding that § 2254(d)(1) permits the "application of a governing legal principle to a set of facts *different* from those in which the case was announced." *Lockyer v. Andrade*, 538 U.S. 63, 76 (2003) (emphasis added).

263. Respondent's Brief at 42-43, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684) (stating "all of the federal courts of appeal have referenced, even if in some instances they have not fully adopted, the 'extension prong' of the 'unreasonable application' clause of § 2254(d)(1)").

Fourth Circuit's announcement of the extension analysis as outlined in *Green*.²⁶⁴ The Supreme Court must still define what legal principles of law in the context of juvenile justice are to be considered fundamental and therefore must be applied to a new context.²⁶⁵ In the absence of such guidance, the Supreme Court will undoubtedly face cases similar to *Alvarado*, where a lower court uses its judgment in concluding what is to be deemed a fundamental principle of law in the context of juvenile justice.²⁶⁶

CONCLUSION

In *Alvarado*, the Supreme Court failed to extend the fundamental legal principle that juveniles are to be afforded increased protections to the context of the *Miranda* custody test. In failing to do so, the Court incorrectly held that to require law enforcement officers to consider the suspect's age would transform an objective test into a subjective one. The Court could have logically concluded age must be considered either when evaluating the circumstances surrounding the interrogation or as incorporated into a modified "reasonable person" standard. This would have been in keeping with the trend of providing increased protection for juveniles. Furthermore, the Court's decision may be viewed with diminished precedential value because of 28 U.S.C. § 2254(d)(1)'s deferential standard. As a result, it is likely that if faced with the same facts outside of the limited AEDPA standard of review, the Court could hold differently and expand the definition of custody in relation to juveniles. Additionally, because Justice O'Connor's concurring opinion was based largely on the fact that the defendant was so close to the age of majority, a different decision may be reached if the suspect is younger than seventeen and one-half years of age. In the future, courts and legislatures will certainly be faced with the task of maintaining consistency and fairness within the justice system, while incorporating the newly evolving common law and statutory law surrounding juveniles.

DAVID WAGNER

264. *Williams v. Taylor*, 529 U.S. 362, 408 (2000). See *Green v. French*, 143 F.3d 865, 869-70 (4th Cir. 1999).

265. *Alvarado v. Hickman*, 316 F.3d 841, 843 (2002) (noting that the Supreme Court has "not directly addressed the issue of how a defendant's juvenile status modifies an 'in custody' determination for the purposes of *Miranda*"). The Ninth Circuit's analysis of *Alvarado* demonstrated how in the absence of clear guidance from the Supreme Court a lower federal court may logically conclude from the Court's jurisprudence that affording juvenile increased protections is a fundamental principle of law. *Id.* See Lt. Col. David H. Robertson, *Self-Incrimination: Big Changes in the Wind*, 2004 ARMY LAW. 37, 50 (2004) ("Having decided that juvenile status is a factor that must be considered when determining whether a suspect is in custody for *Miranda* purposes, the Ninth Circuit has set the stage for the Supreme Court to provide clear guidance to other lower courts who must address this issue.").

266. Respondent's Brief at 25-7, *Yarborough v. Alvarado*, 124 S. Ct. 2140 (2004) (No. 02-1684) (recognizing that "all courts that have squarely addressed the issue . . . recognize juvenile status is relevant to the 'in custody' determination").

