No. 08-196

In The
Supreme Court of the United States

STATE OF NEW MEXICO,

Petitioner,

vs.

ROGER SNELL,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

GARY K. KING
Attorney General of New Mexico

JAMES W. GRAYSON
Assistant Attorney General
Counsel of Record

STEVEN S SUTTLE
Special Counsel

MARGARET ELIZABETH MCLEAN
Assistant Attorney General

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

Counsel for Petitioner

August 2008

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

ARE *MIRANDA* WARNINGS REQUIRED WHEN AN OFFICER ENGAGES IN ROUTINE QUESTIONING AT AN ACCIDENT SCENE WHILE BRIEFLY DETAINING A MOTORIST IN A PATROL CAR?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

UNITED STATES SUPREME COURT CASES:

TABLE OF AUTHORITIES – Continued

Page

UNITED STATES COURT OF APPEALS CASES:

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of New Mexico, respectfully prays that a writ of certiorari issue to the New Mexico Court of Appeals to review its decision entered in this matter on June 13, 2007.

OPINIONS AND ORDERS BELOW

The New Mexico district court's order suppressing statements is unreported. App. 19. The opinion of the New Mexico Court of Appeals, reprinted in the appendix hereto, App., *infra*, 1-18, is reported at 166 P.3d 1106. The New Mexico Supreme Court's issuance of a writ of certiorari to the New Mexico Court of Appeals, App. 23, is reported at 166 P.3d 1090, and its later quashing of the writ, App. 25, is reported at 183 P.3d 934. The New Mexico Supreme Court, in an unreported order, also denied the State's motion for rehearing. App. 27.

JURISDICTION

The New Mexico Court of Appeals, affirming the district court's order of March 31, 2006, filed its opinion on June 13, 2007. App. 1. The New Mexico Supreme Court granted the State's petition for writ of certiorari on August 8, 2007, App. 21, and quashed the writ after full briefing and oral argument on April 18, 2008. App. 25. The New Mexico Supreme Court denied the State's motion for rehearing on May 15,

2008. App. 27. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a) (2000).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the United States, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

In the early evening hours of March 25, 2005, Samantha Sanchez was traveling east from Raton, New Mexico on U.S. Highway 64-85 toward Clayton, New Mexico. Tr. at 11.[1] She was following two car lengths behind a pickup truck driven by Heather Nielsen. Both vehicles were proceeding at a low rate of speed because the highway was very slick and covered with ice and snow. *Id.* at 13. Ms. Sanchez saw a pickup truck being driven by Mr. Snell coming toward them in her lane. Mr. Snell's large Chevrolet "dually" pickup truck hit the Nielsen vehicle "head on." *Id.* at 13, 22. Ms. Sanchez turned into the ditch in an attempt to avoid a collision with Ms. Nielsen. The impact drove Ms. Nielsen's truck backward toward Ms. Sanchez and off the roadway. Mr. Snell's truck came to rest partially on and partially off the highway. *Id.* at 21. Ms. Nielsen died from injuries suffered in the collision.

Ms. Sanchez summoned help and remained at the scene. It continued to snow. *Id.* at 17. While Officer Eric Jones of the New Mexico State Police was interviewing Ms. Sanchez, Mr. Snell approached them. *Id.* at 18, 31. Mr. Snell attempted to interject himself into the interview and tried to get Ms. Sanchez to say that Ms. Nielsen had veered into his lane at the time of the accident. *Id.* Officer Jones told Mr.

---

[1] Transcript of proceedings from the suppression hearing held in the state trial court on March 27, 2006.

Snell to leave, and Officer Alan Apodaca escorted him to a patrol car to get him out of the way and out of the weather. *Id.* at 34, 37. The officer cautioned Mr. Snell that continued interference with the investigation would result in his arrest. *Id.* at 34. New Mexico law requires a motorist to remain at the scene of an accident to render aid and provide information. N.M. Stat. Ann. §§ 66-7-201 & 203 (Michie 2004).

Subsequently, Officer Jones asked Mr. Snell, who was seated in the back seat of the patrol car, what happened. Mr. Snell admitted to driving between sixty and sixty-five miles per hour, an excessive speed for the road conditions. App. 4. Officer Jones unequivocally testified that Mr. Snell was not handcuffed or placed under arrest. Tr. at 34, 37, 40. The officers drove Mr. Snell to a motel in a nearby town. They later called him at the motel seeking additional information. App. 4.

Mr. Snell was later arrested and charged with homicide by vehicle in violation of N.M. Stat. Ann. § 66-8-101 (Michie 2004). Mr. Snell filed a motion to suppress arguing that he was subjected to a custodial interrogation while in the back seat of the patrol car for purposes of warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966). The district court suppressed the statement made at the scene, as well as a statement Mr. Snell later made on the telephone at the motel as the fruit of the initial statement. The State appealed as a matter of right. N.M. Stat. Ann. § 39-3-3 (Michie 2006).

The New Mexico Court of Appeals analyzed the Fifth Amendment and noted the holding in *Berkemer v. McCarty*, 468 U.S. 420 (1984). App. 8-10. The court acknowledged that a motorist is not typically free to leave during a traffic investigation because such a detention constitutes a seizure for Fourth Amendment purposes. App. 8. The court also recognized that traffic investigations ordinarily do not implicate the Fifth Amendment in the same way as a custodial interrogation because such stops are generally brief, public, and inherently less coercive than a full custodial interrogation. App. 8-10. The court, however, held that Mr. Snell was in custody when he was questioned in the back seat of the patrol car and that *Miranda* warnings were necessary. App. 8. The court based its ruling on the conduct of the police in threatening Mr. Snell with arrest, physically escorting him to the patrol car, placing and locking him in the back seat, and questioning him either from the front seat of the vehicle or from a position that would have blocked his exit. App. 10-11. The court also affirmed the district court's suppression of the telephone statement as the fruit of the statement at the scene. App. 17. The State of New Mexico invokes this Court's jurisdiction to review the state court ruling pursuant to 28 U.S.C. § 1257. *See Arkansas v. Sullivan*, 532 U.S. 769, 771 n.1 (2001) (per curiam) (noting jurisdiction over a suppression order "notwithstanding the absence of final judgment in the underlying prosecution").

REASONS FOR GRANTING THE PETITION

Officers are constitutionally required to provide *Miranda* warnings during a custodial interrogation. *Dickerson v. United States*, 530 U.S. 428, 432 (2000). In *Berkemer*, this Court held that *Miranda* warnings are not required during a typical investigatory detention because such encounters between the police and an individual are "temporary and brief," take place in "public, at least to some degree," and are not easily susceptible to improper interrogation techniques given the limited opportunity for an officer "to develop or implement a plan of this sort." 468 U.S. at 437-38 & n.27. Nonetheless, in response to the contention that the police "will simply delay formally arresting detained motorists, and will subject them to *sustained and intimidating interrogation* at the scene of their initial detention," this Court cautioned that *Miranda* warnings will be required if a detained individual "is subjected to treatment that renders him 'in custody' for practical purposes." *Id.* at 440 (emphasis added).

This dicta has created an ambiguity in the application of *Miranda*. The Fifth Amendment requires warnings when an individual has been formally arrested or has been subjected to the degree of restraint "associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam). The Fourth Amendment, under similar terminology, limits the scope of police investigations founded on reasonable suspicion conducted in accordance with *Terry v. Ohio*, 392 U.S. 1 (1968): "[T]he seizure cannot

continue for an excessive period of time or *resemble a traditional arrest*" without probable cause that an offense has been or is being committed. *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185-86 (2004) (emphasis added) (citation omitted).

Courts and commentators alike have struggled with the manner in which the concept of arrest intersects the Fourth and Fifth Amendments. *See United States v. Perdue*, 8 F.3d 1455, 1463-66 (10th Cir. 1993); *Griffin v. United States*, 878 A.2d 1195, 1199 (D.C. 2005); *State v. Morgan*, 648 N.W.2d 23, 28 & n.8 (Wis. Ct. App. 2002); Thomas Gerry Bufkin, Comment, *Terry and Miranda: The Conflict Between the Fourth and Fifth Amendments to the United States Constitution*, 18 Miss. C. L. Rev. 199 (1997); Mark A. Godsey, *When Terry Met Miranda: Two Constitutional Doctrines Collide*, 63 Fordham L. Rev. 715 (1994).

The question seemingly left open by *Berkemer*, and on which both federal and state courts disagree, is whether *Miranda* extends to investigative detentions in which police officers use a greater than normal level of force in response to safety or other law enforcement concerns without effecting a *de facto* arrest. *Compare United States v. Martinez*, 462 F.3d 903, 909-10 (8th Cir. 2006) (applying *Miranda* to investigatory detentions), *cert. denied*, 127 S. Ct. 1502 (2007), *United States v. Newton,* 369 F.3d 659, 673 (2d Cir. 2004) (same), *United States v. Kim*, 292 F.3d 969, 976-77 (9th Cir. 2002) (same), *Perdue*, 8 F.3d at 1463-66 (same), *United States v. Smith*, 3 F.3d 1088, 1096-97 (7th Cir. 1993) (same), *and United States v.*

Elias, 832 F.2d 24, 26-27 (3d Cir. 1987) (same), *with United States v. Trueber*, 238 F.3d 79, 92-93 (1st Cir. 2001) (applying the Fourth Amendment *de facto* arrest standard to determine custody for purposes of *Miranda*), *and United States v. Leshuk*, 65 F.3d 1105, 1109-10 (4th Cir. 1995) (same).

While "specifically reject[ing] Fourth Amendment reasonableness as the standard for resolving *Miranda* custody challenges," the Second Circuit recognized a circuit split and declined to follow the different position taken by the First, Fourth, and, at that time, Eighth Circuits. *Newton*, 369 F.3d at 673; *accord* Katherine M. Swift, Comment *Drawing a Line Between Terry and Miranda: The Degree and Duration of Restraint*, 73 U. Chi. L. Rev. 1075, 1075 (2006) (noting "a circuit split over whether coercive *Terry* stops constitute *Miranda* custody").

This unresolved question is particularly troublesome in the context of on-the-scene questioning in a patrol car. Reflecting the general conflict between courts on the application of *Miranda* to brief investigatory detentions, courts are divided on the specific question of whether *Miranda* extends to questioning in a patrol car when there has been no arrest. This question is of great importance to the law enforcement community. In the context of traffic stops, officers need to be able to take safety precautions without sacrificing their investigative duties. In the context of traffic accidents, officers in the field are

under considerable time constraints to attend to all that is necessary at an accident scene; they are not routinely engaged in the investigation of criminal wrongdoing. New Mexico has unsoundly extended *Miranda* to brief questioning in a patrol car at an accident scene.

I. Federal and state courts are divided over whether *Miranda* warnings must be given to motorists who are briefly detained in patrol cars, not placed under arrest, and then questioned.

The New Mexico Court of Appeals determined that *Miranda* applies to police-citizen encounters in which the level of restraint falls short of a *de facto* arrest. In other words, the court applied *Miranda* to an investigative detention governed by *Terry*.

Despite recognizing that the ultimate inquiry for *Miranda* is whether the level of restraint qualifies as the functional equivalent of an arrest, the court set out the *Terry* standard of whether "a reasonable person in [the defendant's] position would believe he was not free to leave the scene of the interrogation." App. 7. *See generally California v. Hodari D.*, 499 U.S. 621, 627-28 (1991) ("[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.") (quoting *United States*

v. Mendenhall, 446 U.S. 544, 554 (1980) (Opinion of Stewart, J.)) (alteration in original). The New Mexico court determined that *Berkemer*'s holding that there was no custody during a traffic stop "is not a bright-line rule applying to all traffic investigations" and relied on the cautionary language in *Berkemer* to extend *Miranda* beyond *de facto* arrests. App. 10. The court then applied the *Terry* standard to require that the officer provide *Miranda* warnings for routine questioning, concluding that the encounter "was characterized by a show of force *that would have made any reasonable person believe he was not free to leave*." App. 14 (emphasis added).

The court required warnings despite the fact that Mr. Snell was not handcuffed, not told he could not leave, and not placed under arrest. In fact, the officer implicitly informed Mr. Snell he was not under arrest by telling him that he *would be* placed under arrest if he continued to interfere with the traffic investigation, a reason for potential arrest unrelated to the cause of the accident and distinct from the subject of the questioning. Mr. Snell was thus aware that he was being placed in the patrol car in order to stop him from interfering in the traffic investigation. Further, when the officer placed him in the patrol car, Mr. Snell's departure from the scene was already limited by the weather, his statutory duty to remain at the scene, and his disabled truck. The court also failed to consider the fact that the officers took Mr.

Snell to a motel after the brief encounter, a factor typically deemed relevant to a *Miranda* custody inquiry. *See Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) ("At the close of a 1/2-hour interview respondent did in fact leave the police station without hindrance.") (per curiam); *see also Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) ("At the end of the interview, Alvarado went home.").

New Mexico's expansion of *Berkemer* was based on two facts: the officer's threat of arrest and his placing Mr. Snell in the back seat of the patrol car prior to the brief questioning relating to the traffic accident. App. 10-11, 14. The threat of arrest, however, communicated to Mr. Snell that he was indeed not under arrest when he was placed in the patrol car. Once the threat of arrest is removed from the analysis, the court's opinion rests on the single fact that the officer placed Mr. Snell in the back seat. Again relying on *Terry* principles, the court emphasized that "the police did not invite Defendant to join them or make clear that the confinement in their car was at his discretion." App. 14. Had the court based the requirement of warnings on a *de facto* arrest standard, rather than extending *Miranda* to an investigative detention, there is no question that the brief detention in the patrol car would not have triggered *Miranda* warnings. *See Leshuk*, 65 F.3d at 1109-10 ("[D]rawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily

elevate a lawful stop into a custodial arrest for *Miranda* purposes.").

Numerous courts have addressed the custody requirement of *Miranda* in the context of brief questioning in a patrol car, with greatly varying results. In *State v. Washington*, 402 S.E.2d 851, 852-53 (N.C. Ct. App.), *rev'd*, 410 S.E.2d 55 (N.C. 1991), an officer placed the defendant, a motorist, in his patrol car during a routine traffic stop, asked the defendant about weapons in the vehicle, obtained consent to search the vehicle, and asked the defendant about narcotics found during the search. The trial and intermediate appellate courts determined that, although the defendant's freedom of movement was involuntarily restricted, he was not in custody for purposes of *Miranda*. *Id.* at 853. The state's high court, however, reversed on the sole ground that the defendant was involuntarily locked in the back seat of a patrol car. 410 S.E.2d at 56 (adopting the dissenting opinion in the lower court); 402 S.E.2d at 853-54 (Greene, J., dissenting). New Mexico is thus in accord with North Carolina in holding that *Miranda* applies to the involuntary placement of a motorist in a patrol car, regardless of the length or intensity of the questioning or whether other restraints are used. The Utah Supreme Court applied a similar rule based on an officer's accusatory questions about the odor of marijuana on the person of a motorist stopped for speeding and placed in a patrol car, *State v. Mirquet*, 914 P.2d 1144, 1147-49 (Utah 1996), and an Alaska court has treated as determinative whether an officer

ordered or invited the defendant to sit in the back seat of a patrol car, *Rockwell v. State*, 176 P.3d 14, 21 (Alaska Ct. App. 2008).

The rule applied by New Mexico in this case is, however, a minority position. Courts, including those that extend *Miranda* beyond *de facto* arrests, have more commonly held that placement in a patrol car alone does not qualify as custody for purposes of *Miranda*. *United States v. Murray*, 89 F.3d 459, 462 (7th Cir. 1996); *accord United States v. Boucher*, 909 F.2d 1170, 1173-74 (8th Cir. 1990) ("We hold that Boucher was not in custody prior to the formal arrest which took place after [the officer's] routine questioning in the patrol car. . . ."); *State v. Herem*, 384 N.W.2d 880, 883 (Minn. 1986) ("[S]imply requiring defendant to sit in a police car for a short time, an act much less intimidating or coercive than an order delivered at gunpoint, did not take the situation beyond the realm of the ordinary traffic stop."); *State v. Gesinger*, 559 N.W.2d 549, 552-53 (S.D. 1997) ("After considering *Berkemer* in its entirety, and other cases addressing this issue, we conclude Gesinger was not subjected to custodial interrogation while seated in the patrol car under the totality of the circumstances present here."); *State v. Lancto*, 582 A.2d 448, 449 (Vt. 1990) ("[S]uch questioning is not necessarily coercive, absent some evidence that the police officer's actions were calculated to break the suspect's will.") (citation and quotation marks omitted).

In *Murray*, officers placed the defendant in a patrol car during a traffic stop based on his furtive movements and combativeness, and an officer then questioned the defendant about a gun found in the defendant's car. 89 F.3d at 461. The Seventh Circuit focused on the length of the detention, the nature and extent of questioning, and the coerciveness of police conduct in evaluating whether *Miranda* warnings were required. *Id.* at 462. Concluding that the questioning and detention were brief and that there was no police overreaching, the court observed with respect to the defendant being placed in a patrol car that "*Miranda* warnings are not required simply because questioning is conducted in a certain place." *Id.* The court held that the defendant was not restrained "in a manner *equivalent* to that associated with a formal arrest." *Id.*

Although a majority of courts does not view the place of questioning, by itself, as determinative, courts have established other bright-line rules relating to questioning in a police car. Many courts have created a rule that requires *Miranda* warnings during an investigatory detention whenever the police use handcuffs and place an individual in the back seat of a patrol car, apparently without regard to the reason for the precautionary measures, the length of the detention, or the extent or manner of questioning. *See, e.g., Dixon v. Commonwealth*, 613 S.E.2d 398, 401 (Va. 2005) (citing cases); *Commonwealth v. Damiano*, 660 N.E.2d 660, 662 (Mass. 1996) ("The fact that the trooper's initial questioning was not

hostile and was undertaken simply to find out what the defendant knew about what had happened does not excuse the failure to give *Miranda* warnings."). In *Dixon*, an officer handcuffed a motorist involved in a traffic accident because he was unruly toward officers and smelled of alcohol. 613 S.E.2d at 399. The court determined the motorist was in custody for purposes of *Miranda* once the officer placed him in the front passenger seat of a patrol car and locked the door, and the court required warnings for routine questions about the accident. *Id.* at 401. The court adopted a bright-line rule for handcuffs and detention in a patrol car but determined that "the presence of either of these factors, in the absence of the other, may not result in a curtailment of freedom ordinarily associated with a formal arrest." *Id.*

The Second Circuit, meanwhile, has adopted a bright-line rule for handcuffs alone, and although this rule was applied at a home interview, it would presumably apply to motorists as well. *Newton*, 369 F.3d at 676 ("Handcuffs are generally recognized as a hallmark of a formal arrest."). From the use of handcuffs, the court found custody within the meaning of *Miranda* even though the individual was "specifically advised that he was *not* being placed under arrest and that the restraints were being employed simply to ensure his own safety and that of the officers," *id.*, and even though the "seizure did not equate to a *de facto* arrest under the Fourth Amendment." *Id.* at 675. *Contra United States v. Elston*, 479 F.3d 314, 319-20 (4th Cir.) (concluding that a *Terry* stop did not

trigger *Miranda* warnings even though the officers drew their weapons and handcuffed the defendant), *cert. denied*, 127 S. Ct. 2151 (2007).

Other courts have focused on the length of detention in a patrol car, again apparently without regard to the length or nature of the questioning. One state court has held that an officer could not ask an individual involved in an accident the basic question of what had happened without providing warnings because the officer kept the individual at the scene for over thirty minutes, a significant part of which was in a patrol car. *Commonwealth v. Meyer*, 412 A.2d 517, 521-22 (Pa. 1980). In opposition to *Meyer*, another court declined to require warnings as a matter of law when the defendant was kept in a patrol car and intermittently questioned over the course of an hour following an accident. *Commonwealth v. Comolli*, 441 N.E.2d 536, 539 (Mass. App. Ct. 1982).

The New Mexico Court of Appeals' opinion appears to place New Mexico in conflict with its federal circuit. In *United States v. Jones*, 523 F.3d 1235 (10th Cir. 2008), involving similar but not identical facts,[2] the Tenth Circuit evaluated the questioning of an individual in a police car and applied a long line of federal constitutional authority to make its objective

[2] Although Ms. Jones was asked to get in a patrol car, and Mr. Snell was placed there by one of the investigating officers (for reasons other than questioning), this distinguishing fact should be more important to a *Terry* analysis than a *Miranda* inquiry.

evaluation of the question of custody for purposes of *Miranda*. Among the court's observations were:

> Nothing in the record suggests [the agent's] conversation with Jones was marked by "prolonged accusatory questioning . . . likely to create a coercive environment from which an individual would not feel free to leave."

Id. at 1241-42 (quoting *United States v. Griffin*, 7 F.3d 1512, 1518 (10th Cir. 1993), which in turn cited *Berkemer*) (omission in original).

> Although some factors indicate possible police domination of the encounter, the totality of the circumstances suggests the opposite. Jones did encounter multiple agents, but she was not confronted by them simultaneously or aggressively . . . .

Id. at 1242.

> [T]he fact that most of the conversation took place inside [the agent's] unmarked car [is not] dispositive of the custody issue. Although the vehicle belonged to the agents, location alone does not compel the conclusion that a defendant is in custody, so long as his freedom was not curtailed *to a degree similar to arrest*. Police need not administer *Miranda* warnings simply because the questioning is conducted in a certain place, i.e., a patrol car.

Id. (quotation marks and citations omitted; emphasis added).

> In sum, the totality of the circumstances convinces us Jones was not in custody for *Miranda* purposes. A reasonable person in her position would not feel her liberty was restricted to a degree associated with formal arrest. [The agent] clearly told Jones she could freely walk away, his questioning focused mostly on [another suspect's] involvement, and the agents did not dominate the encounter to a degree associated with formal arrest. The conversation, as a result, was either a consensual encounter or, at most, a *Terry* stop. Neither though is enough to trigger the *Miranda* requirements.

Id. at 1244.

The Tenth Circuit's focus in *Jones* on the length and type of questioning, as opposed to the location in which it took place, substantially differs from the analysis of the New Mexico Court of Appeals. For the Tenth Circuit, *Jones* was not a change in direction but part of a consistent application of *Berkemer*. *See, e.g.*, *United States v. Hudson*, 210 F.3d 1184, 1191-92 (10th Cir. 2000); *United States v. Madrid*, 30 F.3d 1269, 1277 (10th Cir. 1994); *see also Perdue*, 8 F.3d at 1463-66 (extending *Miranda* to investigatory detentions with a greater show of force than existed here).

The New Mexico Court of Appeals' extension of *Miranda* to the preliminary investigation of a traffic accident is indicative of the confusion existing throughout the Nation about the reach of *Miranda*

and the meaning of *Berkemer*. This Court's cautionary language in *Berkemer* was specifically directed to a concern about "sustained and intimidating interrogation." However, neither the present case nor those cases cited above requiring *Miranda* warnings in a patrol car during a traffic investigation involved questioning of this nature.

II. The relationship between *Terry* and *Miranda* in the context of traffic investigations is a recurring issue of nationwide importance.

According to the National Highway Traffic Safety Administration, 2,575,000 people were injured in traffic accidents in 2006, including 42,642 deaths. NHTSA, *2006 Traffic Safety Annual Assessment*, http://www-nrd.nhtsa.dot.gov/Pubs/810791.PDF. The New Mexico Department of Transportation reports that 49,318 vehicle collisions occurred in New Mexico during 2006. N.M. Dep't of Transp., *New Mexico Traffic Crash Information 2006*, at 2, http://www.unm.edu/~dgrint/annual/annrept06.pdf. Of these, 22,217 resulted in bodily injury, including 484 deaths. *Id.* These statistics demonstrate the great frequency with which officers in the field are required to respond to traffic accidents.

During the preliminary investigation of a traffic accident, officers must be able to act quickly to determine whether there are injuries, assess the cause for purposes of filing an accident report, and clear

debris to permit the continued flow of traffic. These circumstances are far removed from the "practice of incommunicado interrogation" and the use of "menacing police interrogation procedures" outlined in *Miranda*, 384 U.S. at 457. The application of *Miranda* in this context unduly interferes with legitimate police investigation. *See Hiibel*, 542 U.S. at 185 ("Asking questions is an essential part of police investigations.").

Officers at the scene of an accident will often need to place a motorist in a patrol car due to weather, *see State v. Martin*, 543 N.W.2d 224, 227 (N.D. 1996) ("It would also have been unreasonable, and potentially dangerous, for [the patrolman] to have asked Martin to stand outside during a winter storm answering questions about the accident."); *State v. George*, 408 S.E.2d 291, 297 (W. Va. 1991) (similar), or be required to use this or some other form of restraint to protect their safety. Officers should not have to operate at their peril in taking these precautions, yet that is the end result of the unpredictable and disparate manner in which federal and state courts have applied *Berkemer*.

Officers face a dilemma when *Miranda* is extended beyond *de facto* arrests. This dilemma is illustrated by the Tenth Circuit's discussion of the issue in the context of a traffic stop. In *Perdue*, officers were on perimeter security for the execution of a warrant to search a property containing large quantities of drugs and several weapons when they stopped an approaching car. 8 F.3d at 1458-59. The court held

that the officers acted within the proper scope of a *Terry* stop when, with their guns drawn, they ordered the defendant out of his car and on the ground based on a reasonable belief that the defendant may have been armed. *Id.* at 1462-63. Despite this rapidly developing situation and the need to quickly determine the defendant's status for officer safety purposes, however, the Tenth Circuit further held that the officers were required to administer *Miranda* warnings before asking the defendant the simple question of why he was on the property: "Police officers must make a choice – if they are going to take highly intrusive steps to protect themselves from danger, they must similarly provide protection to their suspects by advising them of their constitutional rights." *Id.* at 1465.

Miranda was not intended to require traffic officers to make this Hobson's "choice" between protecting their safety and jeopardizing, interrupting, or changing their reasonable and legitimate efforts in responding to a traffic accident or their reasonable and legitimate investigation during a traffic stop. In the words of one commentator, the expansion of *Miranda* to investigatory detentions "needlessly and dangerously impairs a *Terry* inquiry." Note, *Custodial Engineering: Cleaning Up the Scope of Miranda Custody During Coercive Terry Stops*, 108 Harv. L. Rev. 665, 668 (1995). The Nation's traffic officers need more certainty and guidance than currently exists. Amid the urgency of an accident scene, officers need

to know what circumstances trigger *Miranda* warnings.

III. The New Mexico Court of Appeals improperly extended *Miranda* to on-the-scene questioning during a brief investigatory detention.

The New Mexico Court of Appeals held:

> The conduct of the police in this case in threatening Defendant with arrest, physically escorting him to the police car, placing him in the back seat, where he was locked in, leaving him there, and then returning to question him either from the front seat of the vehicle while he was locked in the back, or opening the back door and questioning him from a position that would have blocked his exit from the vehicle, exerted just the sort of pressure to which *Berkemer* refers.

App. at 10-11. Even accepting this view of the facts in this case, the court misapplied *Berkemer*. This extreme position – applying *Miranda* when an individual is placed in a patrol car at the scene of a traffic accident without force or sustained and intimidating questioning – cannot be squared with this Court's precedent.

The requirement of providing *Miranda* warnings during a brief investigatory detention is at odds with this Court's decision in *Miranda* to "give[ ] ample latitude to law enforcement agencies in the legitimate

exercise of their duties" and to allow the police to continue to "carry[ ] out their traditional investigatory functions." *Miranda*, 384 U.S. at 481. *Miranda* "is not intended to hamper the traditional function of police officers in investigating crime" and does not prevent "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process." *Id.* at 477. "In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." *Id.* at 478.

"It is settled that the safeguards prescribed by *Miranda* become applicable as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'" *Berkemer*, 468 U.S. at 440 (quoting *Beheler*, 463 U.S. at 1125); *see also Mathiason,* 429 U.S. at 495. The recognition in *Berkemer* that *Miranda* applies to the "functional equivalent of formal arrest," 468 U.S. at 442, is nothing more than this Court's similar determination that the Fourth Amendment's probable cause requirement extends beyond "technical arrests." *Dunaway v. New York*, 442 U.S. 200, 213 (1979); *see Florida v. Royer*, 460 U.S. 491, 515 (1983) (Blackmun, J., dissenting) ("In my view, it cannot fairly be said that, prior to the formal arrest, *the functional equivalent of an arrest* had taken place.") (emphasis added). An investigatory detention may become a *de facto* arrest when officers increase the level of restraint by placing an individual in a police-dominated environment characterized by sustained and intimidating interrogation. *See*

Royer, 460 U.S. at 503 (plurality opinion) ("As a practical matter, Royer was under arrest."). A similar level of restraint will likely trigger *Miranda* warnings. *Pennsylvania v. Bruder*, 488 U.S. 9, 11 n.2 (1988) (per curiam) (referring to "prolonged detention"). Short of a *de facto* arrest, however, this Court has noted in the Fourth Amendment context that brief investigatory detentions lack the "coercive aspects likely to induce self-incrimination." *Michigan v. Summers*, 452 U.S. 692, 702 n.15 (1981) (distinguishing *Dunaway* on this basis).

Thus, in accordance with this Court's Fourth Amendment jurisprudence, New Mexico and numerous other jurisdictions have misinterpreted *Berkemer* by extending *Miranda* beyond the *de facto* arrest context to brief investigatory detentions in which officers have been required to take reasonable precautionary measures for safety or other legitimate reasons. The First and Fourth Circuits are correct to apply the *de facto* arrest standard to *Miranda*'s custody determination. *See Trueber*, 238 F.3d at 92-93 (holding that the drawing of a weapon was not sufficient "to convert the investigatory stop into a de facto arrest"); *see also Leshuk*, 65 F.3d at 1109-10.

During an investigatory stop, officers are permitted to detain an individual for a reasonable amount of time to diligently pursue a means of investigation, *United States v. Sharpe*, 470 U.S. 675, 686-87 (1985), and, based on "reasons of safety and security," to "mov[e] a suspect from one location to another," *Royer*, 460 U.S. at 504 (plurality opinion). An officer

who reasonably and briefly detains an individual in a patrol car for legitimate investigative reasons, either with handcuffs or without them, has not effected a *de facto* arrest and, concomitantly, has not engaged in the coercive behavior likely to induce self-incrimination to which *Miranda* is directed. *See Berkemer*, 468 U.S. at 437 ("Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated."). As this Court held in *Mathiason*, the place of questioning is not a controlling factor in determining custody. 429 U.S. at 495 ("Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.").

In *Bruder*, this Court reiterated the holding in *Berkemer* that "ordinary traffic stops do not involve custody for the purposes of *Miranda*." 488 U.S. at 11. In short, the routine questioning attached to the investigation of a traffic accident has never been viewed by this Court as the sort of accusatory, secluded, prolonged interrogation that would warrant advice of rights under *Miranda*. "[A] noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.'" *Mathiason*, 429 U.S. at 495.

A State is free, of course, to grant expanded procedural rights to its citizens beyond those enumerated in the Federal Constitution. *Danforth v. Minnesota*, 128 S. Ct. 1029, 1038 (2008). Here, however, the court expressly determined that Mr. Snell did not preserve a state constitutional claim and limited its analysis to the Fifth Amendment. App. 6.

The New Mexico Court of Appeals misinterpreted and misapplied federal law and unduly interfered with brief on-the-scene questioning. The Nation's tens of thousands of traffic officers are under considerable time constraints to attend to all that is necessary at an accident scene. They are not routinely engaged in the investigation of criminal wrongdoing. It is unreasonable to expect them to give *Miranda* warnings to everyone detained at a scene for the statistically unlikely contingency a criminal prosecution will result.

Miranda's safeguards are only applicable when an individual's freedom of action is restricted to a "degree associated with formal arrest." *Beheler*, 463 U.S. at 1125. Such was not the case here.

CONCLUSION

For the foregoing reasons, this Court should issue its writ of certiorari to review the opinion of the New Mexico Court of Appeals.

Respectfully submitted,

GARY K. KING
Attorney General of New Mexico

JAMES W. GRAYSON
Assistant Attorney General
Counsel of Record

STEVEN S SUTTLE
Special Counsel

MARGARET ELIZABETH MCLEAN
Assistant Attorney General

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

Counsel for Petitioner

August 2008