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PROTECTING PRISONERS DURING CUSTODIAL INTERROGATIONS: THE ROAD FORWARD AFTER *HOWES v. FIELDS*

MICHELLE PARILO*

Abstract: In 1966, in *Miranda v. Arizona*, the U.S. Supreme Court sought to mitigate the inherently coercive atmosphere of custodial interrogations to protect victims from involuntary self-incrimination. In analyzing custody for *Miranda* purposes, courts look at whether a reasonable person would feel that his freedom of movement had been restricted. When conducting this analysis for a prisoner questioned during incarceration, courts should thoroughly consider the negative psychological effects of prisons in order to understand the prisoner's mindset. The Court had the opportunity to do so in *Howes v. Fields*, but it instead minimized the coercive effects of prisons. Moreover, the Court's finding that the prisoner in *Howes* was not in *Miranda* custody is inconsistent with its past holdings. This Note argues that, in the future, courts should consider with greater nuance the negative effects of prisons in order to protect prisoners from making involuntary confessions.

INTRODUCTION

On the night of December 23, 2001, officers took Randall Lee Fields from his jail cell; he did not know where he was being taken or for what purpose.¹ He was serving a forty-five day sentence at the Lenawee County Sheriff's Department for disorderly conduct.² A jail guard and two sheriff's deputies escorted Fields, dressed in his orange jumpsuit, from the jail to the sheriff's department in the same building.³ The deputies ushered Fields down a flight of stairs and through a locked door that separated the jail and the sheriff's department.⁴ The deputies then took Fields into a locked conference room in the administrative section of the jail and interrogated him about allegations of

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¹ *Fields v. Howes*, 617 F.3d 813, 815 (6th Cir. 2010), *rev'd*, 132 S. Ct. 1181 (2012).

² *Id.*; Brief for the Respondent at 1, *Howes v. Fields*, 132 S. Ct. 1181 (2012) (No. 10-680).

³ Brief for the Respondent, *supra* note 2, at 1–2.

⁴ *Howes v. Fields*, 132 S. Ct. 1181, 1185–86 (2012); Brief for the Respondent, *supra* note 2, at 1.

sexual conduct that had occurred outside the prison.⁵ The deputies did not give Fields a *Miranda* warning, nor did they warn him that he was a suspect in their investigation.⁶ Fields believed that he was required to speak with the deputies, and was not told otherwise.⁷ In fact, Fields stated multiple times that he didn't want to speak with the deputies any longer.⁸ The deputies subsequently extracted an incriminating statement from Fields.⁹

Although Fields was not restrained during the interrogation, the deputies were armed.¹⁰ He was frightened during the interrogation when Deputy Batterson swore at him, commanding that he "sit [his] fucking ass down."¹¹ During the interview, Fields "became agitated and began to yell."¹² Despite being told he could return to his cell at any time, Fields did not feel that he had the freedom to leave.¹³ Deputy Batterson admitted that Fields "could not have just gotten up and walked out of the room."¹⁴ Moreover, an immediate return to his cell would not have been possible because he had to wait for the corrections officer to escort him, which would have taken approximately twenty minutes.¹⁵ Fields had never been in that part of the jail before and did not know how to get back to his cell.¹⁶

The interrogation began sometime between 7:00 p.m. and 9:00 p.m.¹⁷ Although the standard bedtime for prisoners was 10:30 p.m., and although Fields was scheduled to wake up to take a dose of his medication at 5:00 a.m., he was not escorted back to his cell until 2:00

⁵ *Fields*, 617 F.3d at 815; Brief for the Respondent, *supra* note 2, at 1–2. The conference room door was opened and closed at various points during the interrogation. *Howes*, 132 S. Ct. at 1186.

⁶ See *Howes*, 132 S. Ct. at 1186; Brief for the Respondent, *supra* note 2, at 2. In *Miranda v. Arizona*, the Supreme Court mandated that prior to custodial interrogation, "the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." 384 U.S. 436, 444 (1966).

⁷ See *Howes*, 132 S. Ct. at 1186; Brief for the Respondent, *supra* note 2, at 2.

⁸ *Howes*, 132 S. Ct. at 1186.

⁹ *Id.*; Brief for the Respondent, *supra* note 2, at 1.

¹⁰ *Howes*, 132 S. Ct. at 1186.

¹¹ *Fields*, 617 F.3d at 815; Brief for the Respondent, *supra* note 2, at 2.

¹² *Howes*, 132 S. Ct. at 1186.

¹³ *Id.*; Brief for the Respondent, *supra* note 2, at 2.

¹⁴ Brief for the Respondent, *supra* note 2, at 2–4.

¹⁵ *Howes*, 132 S. Ct. at 1186.

¹⁶ Brief for the Respondent, *supra* note 2, at 2. In fact, on his way back to his cell, Fields started walking down the wrong hallway. *Id.*

¹⁷ *Howes*, 132 S. Ct. at 1186. Fields stated that he was escorted from his cell at 8:00 p.m. and that the interview started around 8:30 p.m. *Id.* at 1186 n.1.

a.m.¹⁸ Further, as a result of the interrogation, Fields did not receive his nightly dose of medication.¹⁹ Overall, the questioning lasted between five and seven hours.²⁰ One of the deputies said the length of this interrogation was not unusual, but that he had never participated in one of that length.²¹

After the officers obtained a confession from Fields, the interrogation ended and he was returned to his cell.²² He confessed to engaging in sexual acts with a twelve-year-old boy.²³ Fields was convicted of criminal sexual conduct and sentenced to a term of ten to fifteen years of imprisonment.²⁴

* * * * *

The facts of *Howes v. Fields*, are not uncommon; in many cases, the defendant prisoner is isolated from the general prison population, questioned about conduct occurring outside the prison, and induced into making inculpatory statements without receiving *Miranda* warnings.²⁵ These cases highlight an important law enforcement technique that was addressed in *Miranda v. Arizona*: the questioning of suspects in custody in order to obtain information and confessions.²⁶ *Miranda* imposed procedural safeguards to protect the suspect's privilege against self-incrimination in these situations.²⁷ A person is considered "in cus-

¹⁸ Brief for the Respondent, *supra* note 2, at 2–3. The Michigan Court of Appeals, however, stated that the interrogation ended around midnight. *Howes*, 132 S. Ct. at 1186 n.2. Fields was on medication for his transplanted kidney and depression. Brief for the Respondent, *supra* note 2, at 3.

¹⁹ Brief for the Respondent, *supra* note 2, at 3.

²⁰ *Howes*, 132 S. Ct. at 1186 n.2. Based on testimony from the deputies, the Court of Appeals reported that the interrogation lasted for seven hours. *Id.* Fields thought the interrogation ended around 1:30 a.m. or 2:00 a.m., making the total number of hours five or five and a half. *Id.*

²¹ Brief for the Respondent, *supra* note 2, at 4.

²² *Howes*, 132 S. Ct. at 1186.

²³ *Id.* at 1185–86.

²⁴ *Id.* at 1186.

²⁵ *See, e.g., id.* at 1185–87; *Mathis v. United States*, 391 U.S. 1, 2–5 (1968) (refusing to admit into evidence a confession of an inmate who was separated from the general prison population to be interrogated for filing false income taxes, a crime unrelated to the one for which he was incarcerated); *United States v. Menzer*, 29 F.3d 1223, 1225, 1232–33 (7th Cir. 1994) (admitting a confession of arson by an imprisoned defendant who was in prison for probation revocation and interrogated away from the general prison population); *Leviston v. Black*, 843 F.2d 302, 303–05 (8th Cir. 1988) (admitting a confession of robbery by defendant who was in jail on an unrelated charge and interrogated outside of the general prison population).

²⁶ *Miranda*, 384 U.S. at 478–79.

²⁷ *Id.*

today” if the circumstances surrounding the interrogation would lead a reasonable person to feel his freedom was restrained to the “degree associated with a formal arrest.”²⁸ *Miranda* requires that whenever a person is in custody, “[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”²⁹ The *Miranda* Court articulated these procedural safeguards after balancing the value of interrogations to law enforcement and the need to protect individuals’ constitutional privilege against self-incrimination resulting from potential psychological ploys used by the police to create an inherently coercive environment.³⁰

Miranda custody concerns are even more acute for individuals who are incarcerated.³¹ The prison environment itself can amount to the type of inherently coercive atmosphere that *Miranda* sought to avoid because of its isolating and degrading conditions.³² Prisons are dehumanizing primarily because they strip prisoners of their freedom and privacy.³³ Prisoners live in a state of constant fear and paranoia, leading them to be antisocial and to sometimes turn against their fellow prisoners.³⁴ Most researchers agree that living in a prison causes long-term psychological harm.³⁵ Moreover, prison guards wield a cruel brand of authority over prisoners because they, too, have been hardened by the prison culture.³⁶

When analyzing custody for *Miranda* purposes, courts should consider the inherently negative sociological and psychological effects that

²⁸ *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).

²⁹ *Miranda*, 384 U.S. at 444.

³⁰ *See id.* at 448–55, 481, 490–91.

³¹ Trisha Chokshi, *The Scope of Miranda Rights in Prison: When Is Someone in Custody “in Custody”?*, 24 J. DU PAGE COUNTY B. ASS’N 22, 22 (2011).

³² *See* MICHEL FOUCAULT, DISCIPLINE & PUNISH 236–37 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977); Craig Haney, *The Psychological Impact of Incarceration: Implications for Postprison Adjustment*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 33, 45 (Jeremy Travis & Michelle Waul eds., 2003), available at <http://www.prisonexp.org/pdf/haney.pdf>.

³³ PHILIP ZIMBARDO, THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL 223 (2008).

³⁴ *Id.* at 24–25, 205; Haney, *supra* note 32, at 41.

³⁵ Haney, *supra* note 32, at 38.

³⁶ *See* MICHAEL G. SANTOS, INSIDE: LIFE BEHIND BARS IN AMERICA 52 (2006); ZIMBARDO, *supra* note 33, at 18–20.

result from incarceration.³⁷ In *Howes v. Fields*, the Supreme Court had the opportunity to inquire into the lives of prisoners while conducting its “all of the circumstances” test for determining *Miranda* custody.³⁸ The Court, however, declined to do so, and instead chose to minimize the negative effects of prison.³⁹ Moreover, the Court’s holding was inconsistent with its past decisions regarding *Miranda* custody of interrogated prisoners.⁴⁰

Part I of this Note follows the history of the Court’s protection of an individual’s privilege against self-incrimination, beginning with its peak in 1966 with the *Miranda* decision and ending with *Miranda*’s erosion in the late twentieth and early twenty-first centuries. Part II discusses the inherent sociological and psychological pressures of incarceration by exploring the experiences of prison guards and prisoners. Part III examines the Supreme Court’s holding in *Howes*, highlighting the Court’s failure to adequately consider the mindset of the prisoner. Part III argues that the Court’s finding that Fields was not in *Miranda* custody when he was interrogated is inconsistent with its past decisions about *Miranda* custody in the prison context. Finally, Part IV suggests that the Court should have closely examined the brutal atmosphere of prisons during its *Miranda* custody analysis in *Howes*, rather than minimizing the negative effects of the coercive prison atmosphere and incorrectly holding that Fields did not need to be given *Miranda* warnings. Part IV also argues that the Court was correct in declining to find a per se rule for *Miranda* custody in the prison context; however, in the future, courts should consider the negative effects of prisons more closely when determining whether a reasonable prisoner would have felt free to terminate the interrogation.

I. THE EVOLUTION OF THE *MIRANDA* STANDARD

The Warren Court’s holding in *Miranda v. Arizona* in 1966 was the peak of the criminal procedural revolution: rights of criminal suspects

³⁷ See David C. Berg, *Putting the Fifth Amendment Behind Bars: United States v. Morales*, 55 BROOK. L. REV. 455, 475 (1989); Maya Dominguez, “Custody” in *Custody: Redefining Miranda Rights in Prison*, 19 AM. U. J. GENDER SOC. POL’Y & L. 1305, 1306, 1314–16 (2011); Haney, *supra* note 32, at 38–43.

³⁸ See *Howes*, 132 S. Ct. at 1192–94.

³⁹ See *id.* at 1189–92; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38–43.

⁴⁰ See *Howes*, 132 S. Ct. at 1187–89; *Maryland v. Shatzer*, 130 S. Ct. 1213, 1224–25 (2010); *Illinois v. Perkins*, 496 U.S. 292, 294–97 (1990); *Mathis*, 391 U.S. at 2–5.

expanded and the scope of constitutional police practices shrank.⁴¹ Since that time, the scope of *Miranda* has been limited by the Burger and Rehnquist Courts' narrow interpretations of the holding.⁴² As a result, suspects' Fifth Amendment rights in the interrogation context have been limited as well.⁴³

A. *Miranda v. Arizona: Taming the Coercive Atmosphere*

In *Miranda*, the Warren Court held that the police must obey procedural safeguards whenever interrogating a suspect in custody.⁴⁴ The Court's holding reflected its belief that the police were resorting to psychological and mental coercion during custodial interrogations.⁴⁵ The police sought to interrogate a suspect in privacy to deprive the suspect of every "psychological advantage."⁴⁶ They sought to have the suspect isolated in unfamiliar surroundings for the interrogation in order to create an intimidating atmosphere.⁴⁷ The *Miranda* Court read police manuals to understand the psychological ploys conducted by the police to extract confessions.⁴⁸ In particular, the ploys utilized included "minimiz[ing] the moral seriousness of the offense" or "cast[ing] blame on

⁴¹ 384 U.S. 436, 439, 444 (1966); Michael J. Roth, Note, *Berkemer Revisited: Uncovering the Middle Ground Between Miranda and the New Terry*, 77 *FORDHAM L. REV.* 2779, 2786 (2009).

⁴² See, e.g., *Berghuis v. Thompkins*, 130 S. Ct. 2250, 2264 (2010) (holding that in order to invoke his right to remain silent, a suspect must say that he chooses to remain silent); *United States v. Patane*, 542 U.S. 630, 633–34 (2004) (holding that when a suspect is not given his *Miranda* warnings, his statements are not allowed to be admitted, but physical evidence that is found as a result of the statements can be admitted); *Davis v. United States*, 512 U.S. 452, 454–55, 462 (1994) (holding that a suspect being interrogated must clearly request counsel, rather than simply reference it); *Oregon v. Elstad*, 470 U.S. 298, 300–02, 308 (1985) (holding that *Miranda* was a prophylactic rule and therefore admitting the defendant's second confession, even though he had already let the "cat out of the bag" with his first confession, which he gave before receiving his *Miranda* warnings); *Oregon v. Bradshaw*, 462 U.S. 1039, 1045–47 (1983) (holding that a suspect who initiated conversation with officials after the questioning had ceased could be subjected to further interrogation); *Michigan v. Mosley*, 423 U.S. 96, 97–98, 104, 107 (1975) (holding that as long as the officials "scrupulously honored" a suspect's right to silence by ceasing questioning on the relevant case after the suspect clearly invoked his right to silence, then other officials could question him about an unrelated crime two hours later).

⁴³ D. Christopher Dearborn, "You Have the Right to an Attorney," but Not Right Now: Combating *Miranda*'s Failure by Advancing the Point of Attachment Under Article XII of the Massachusetts Declaration of Rights, 44 *SUFFOLK U. L. REV.* 359, 369 (2011).

⁴⁴ *Miranda*, 384 U.S. at 439, 444.

⁴⁵ *Id.* at 445–55.

⁴⁶ *Id.* at 449.

⁴⁷ *Id.* at 449–50, 457.

⁴⁸ *Id.* at 448–50.

the victim or on society.”⁴⁹ The Court recognized that, while these tactics did not amount to the “third degree,” such custodial interrogation still “exact[ed] a heavy toll on individual liberty” and was “equally destructive of human dignity.”⁵⁰ The Court held that confessions obtained in such an atmosphere violated the Fifth Amendment prohibition against self-incrimination because they were not completely voluntary.⁵¹

In light of these findings, the Court implemented *Miranda* rights as a procedural safeguard to address the “inherently compelling pres-

⁴⁹ *Id.* The Court observed the following:

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must “patiently maneuver himself or his quarry into a position from which the desired objective may be attained.” When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Id. at 455.

⁵⁰ *Miranda*, 384 U.S. at 455, 457. The “third degree” was a police tactic using forms of cruelty and brutality to obtain involuntary confessions, which was highlighted by President Hoover’s Wickersham Commission. Amos N. Guiora, *Relearning Lessons of History: Miranda and Counterterrorism*, 71 LA. L. REV. 1147, 1153–54 (2011). As a result of this exposure of police brutality, the fundamental fairness concept of the Due Process Clause served as the Court’s basis for barring coerced confessions during the mid-1900s. *Dickerson v. United States*, 530 U.S. 428, 433–34 (2000); Guiora, *supra*, at 1154–55. During that time, the Court employed a voluntariness standard as the test of admitting confessions in approximately thirty cases. *Schneckloth v. Bustamonte*, 412 U.S. 218, 223 (1973) (stating that “between [*Brown v. Mississippi* and *Escobedo v. Illinois*] the Court was faced with the necessity of determining whether in fact the confessions in issue had been ‘voluntarily’ given”). The test sought to determine whether a defendant’s will was overborne and his “capacity for self-determination critically impaired” in order to determine whether his confession offended due process, thus making the confession inadmissible. *Id.* at 225–26. The voluntariness standard proved tricky because it was subjective and ad hoc. *Culombe v. Connecticut*, 367 U.S. 568, 604–05 (1961) (noting the amorphous nature of the voluntariness standard). It did not provide police forces with sufficient guidance for creating constitutional interrogation procedures because the standard was ambiguous. Richard L. Budden, Note, *All in All, Miranda Loses Another Brick from Its Wall: The U.S. Supreme Court Swings Its Hammer in Berghuis v. Thompkins, Dealing a Crushing Blow to the Right to Remain Silent*, 50 WASHBURN L.J. 483, 488 (2011). The Court noted that the approximately thirty cases for which it applied the voluntariness standard “yielded no talismanic definition of ‘voluntariness.’” *Schneckloth*, 412 U.S. at 223–24.

⁵¹ *Miranda*, 384 U.S. at 457–58.

tures” of custodial interrogation.⁵² The *Miranda* Court required that, “[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”⁵³

The *Miranda* Court acknowledged, but ultimately eschewed, the opposing argument “that society’s need for interrogation outweigh[ed] the privilege,” holding instead that an individual’s constitutional right to not be compelled to be a witness against himself cannot be abridged.⁵⁴ Moreover, the Court did not believe its decision constituted an undue interference with law enforcement practices because the police could still carry out traditional investigative functions.⁵⁵ In imposing *Miranda* warnings, the Court sought to balance the state’s interest in prosecuting criminals and the suspect’s Fifth Amendment privilege against self-incrimination.⁵⁶

B. *How Courts Determine Who Is “in Custody”*

Miranda requires procedural protections whenever a suspect is questioned in “custody or otherwise deprived of his freedom of action in any significant way.”⁵⁷ A custodial atmosphere is one that is police-dominated and that isolates the suspect from the outside world.⁵⁸ Suspects who are physically and psychologically isolated by the police for interrogation are subjected to an inherently coercive atmosphere that could potentially lead them to confess to crimes they never committed.⁵⁹

In order to determine whether a person is in custody for *Miranda* purposes, the court must first consider whether, given all of the circumstances surrounding the interrogation, a reasonable person would have felt restraint on his “freedom of movement of the degree associated with a formal arrest.”⁶⁰ In order to determine whether a reasonable person would feel free to leave, courts consider, among other things, whether the location is familiar to the suspect, the duration of the in-

⁵² *Id.* at 467.

⁵³ *Id.* at 444.

⁵⁴ *Id.* at 479.

⁵⁵ *Id.* at 481.

⁵⁶ *Id.* at 479–81.

⁵⁷ *Miranda*, 384 U.S. at 444.

⁵⁸ *Id.* at 445.

⁵⁹ *Id.* at 455 n.24, 467.

⁶⁰ *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (internal quotation marks omitted).

interrogation, whether the suspect was restrained in any manner, and whether the suspect was released at the end of the interrogation.⁶¹ The court must then assess these factors using a reasonable person standard to see whether the atmosphere is inherently coercive, like the type at play in the station house questioning in *Miranda*.⁶²

In 1984, the Supreme Court held in *Berkemer v. McCarty* that a routine traffic stop does not require *Miranda* warnings because it is usually brief and in a public setting.⁶³ The Court did note, however, that drivers generally do not believe they can ignore an officer's request to pull over or leave the scene without the officer's express permission.⁶⁴ Even still, the Court found that this situation does not "sufficiently impair [a person's] exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights."⁶⁵ The Court reasoned that a traffic stop differs from a formal arrest because of its short length, usually lasting only a few minutes, and because motorists do not feel "completely at the mercy of the police."⁶⁶

Conversely, in 2011, in *J.D.B. v. North Carolina*, the Court held that the police's interrogation of a child at her school was custodial despite the familiarity of the setting.⁶⁷ The Court was concerned with the increased risk that juveniles will succumb to the pressures of custodial interrogation, leading them to falsely confess or otherwise make statements that "are not the product of [their] free choice."⁶⁸

Although location is an important consideration in the custody inquiry, it is not in itself determinative.⁶⁹ For example, the defendant in *Orozco v. Texas* was deemed in custody when police officers questioned him in his bedroom at four a.m.⁷⁰ The Court's opinion turned on the fact that the defendant lacked freedom of movement because one of the officers said he was under arrest from the time the defendant said

⁶¹ *Howes v. Fields*, 132 S. Ct. 1181, 1189 (2012).

⁶² *See id.* at 1189–90; *Oregon v. Mathiason*, 429 U.S. 492, 496 (1977) (Marshall, J., dissenting) (noting that defendant had an "objectively reasonable belief that he was not free to leave during the questioning").

⁶³ *Berkemer v. McCarty*, 468 U.S. 420, 436–39 (1984).

⁶⁴ *Id.* at 436.

⁶⁵ *Id.* at 437.

⁶⁶ *Id.* at 437–39.

⁶⁷ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401, 2408 (2011).

⁶⁸ *Id.* at 2401.

⁶⁹ *See Mathiason*, 429 U.S. at 495 (holding that *Miranda* warnings are not required "simply because the questioning takes place in the station house").

⁷⁰ *Orozco v. Texas*, 394 U.S. 324, 325–27 (1969).

his name.⁷¹ Thus, despite the fact that he was in a familiar setting, the defendant was in custody at the time of the questioning in his bedroom.⁷² In contrast, in 1976, the Supreme Court held that the defendant in *Beckwith v. United States* was not in custody when he was questioned by special agents of the Internal Revenue Service about his income taxes in a private home where he occasionally stayed.⁷³

Additionally, a suspect who is interrogated at the police station is not necessarily in custody for *Miranda* purposes.⁷⁴ While the Court in *Miranda* said that a suspect might be compelled to speak in the “isolated setting of the police station,” where a suspect comes to the police station voluntarily, his freedom to depart is not restricted and so he is not considered in custody for *Miranda* purposes.⁷⁵

C. Custody in Prisons Versus Custody for *Miranda* Purposes

The Supreme Court has decided four cases regarding the issue of whether prisoners must receive *Miranda* warnings when being interrogated at the prison.⁷⁶ Each decision came down to the issue of whether or not the prisoner was in custody within the meaning prescribed by *Miranda*, as opposed to merely being in the custody of the prison.⁷⁷ The Court focused on the atmosphere during questioning to determine whether there was a risk of coercion necessitating *Miranda* warnings.⁷⁸

In 1968, in *Mathis v. United States*, the Court considered whether Robert T. Mathis, Sr., a prisoner at the Florida State Penitentiary, was entitled to *Miranda* warnings when an Internal Revenue Service (IRS) Agent isolated him from the general prison population and interrogated regarding an offense unconnected to the crime for which he was currently incarcerated.⁷⁹ The IRS Agent asked Mathis questions regarding his 1960 tax return and took his written consent to extend the stat-

⁷¹ *Id.* at 325 (“[A]ccording to the testimony of one of the officers, petitioner was not free to go where he pleased . . .”).

⁷² *Id.* at 326.

⁷³ 425 U.S. 341, 341–44 (1976).

⁷⁴ *California v. Beheler*, 463 U.S. 1121, 1121–22 (1983).

⁷⁵ *Id.*; *Miranda*, 384 U.S. at 461.

⁷⁶ See generally *Howes*, 132 S. Ct. 1181; *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010); *Illinois v. Perkins*, 496 U.S. 292, 292 (1990); *Mathis v. United States*, 391 U.S. 1, 2–5 (1968).

⁷⁷ See *Howes*, 132 S. Ct. at 1189–92; *Shatzer*, 130 S. Ct. at 1224–25; *Perkins*, 496 U.S. at 296; *Mathis*, 391 U.S. at 3–5.

⁷⁸ See *Howes*, 132 S. Ct. at 1189–92; *Shatzer*, 130 S. Ct. at 1224–25; *Perkins*, 496 U.S. at 296; *Mathis*, 391 U.S. at 3–5.

⁷⁹ *Mathis*, 391 U.S. at 2–3.

ute of limitations of this return.⁸⁰ The IRS Agent returned less than a year later to interrogate Mathis regarding his 1961 returns.⁸¹ During these interrogations the IRS Agent neither gave Mathis his *Miranda* warnings, nor told him that he was under investigation for filing false income tax returns in 1960 and 1961.⁸² The Court found that Mathis was in custody for *Miranda* purposes, but did not explain its reasoning.⁸³ The U.S. Court of Appeals for the Sixth Circuit subsequently attempted to clarify the Supreme Court's holding, saying that Mathis was in custody because he was isolated from the general prison population.⁸⁴ The Supreme Court then corrected the Sixth Circuit and stated a narrower holding: that a prisoner who otherwise deserves his *Miranda* warnings is not deprived of them if he is incarcerated for an unconnected offense nor if a criminal investigation has not commenced.⁸⁵

In 1990, in *Illinois v. Perkins*, the Court admitted a confession from inmate Lloyd Perkins regarding crimes unrelated to the crime for which he was incarcerated even though he had not been given his *Miranda* warnings.⁸⁶ Perkins confessed to an undercover agent in his cell to a murder that occurred outside of the jail.⁸⁷ The Court held that “[c]onversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*” because the coercive atmosphere is not present when the suspect believes he is simply confiding in a cellmate.⁸⁸ The Court rejected the idea that *Miranda* warnings are required whenever a person technically in custody is speaking with a government agent.⁸⁹

In 2010, in *Maryland v. Shatzer*, the Court articulated the difference between a prisoner being in the custody of a prison and being in *Miranda* custody.⁹⁰ There, a detective interrogated inmate Michael Shatzer two separate times about a crime unrelated to the one for which he was currently serving time.⁹¹ The Court did not question that Shatzer was in custody during the interrogations as he was removed

⁸⁰ *Id.* at 3 n.2.

⁸¹ *Id.*

⁸² *Id.* at 2–3.

⁸³ *Id.* at 3–5.

⁸⁴ *Fields v. Howes*, 617 F.3d 813, 818 (6th Cir. 2010), *rev'd*, 132 S. Ct. 1181 (2012).

⁸⁵ *Howes*, 132 S. Ct. at 1188.

⁸⁶ *Perkins*, 496 U.S. at 294.

⁸⁷ *Id.* at 295.

⁸⁸ *Id.* at 296.

⁸⁹ *Id.* at 297.

⁹⁰ *Id.* at 1224–25.

⁹¹ *Shatzer*, 130 S. Ct. at 1217–18.

from his “normal life” to an isolated place for questioning.⁹² The Court, however, highlighted that Shatzer was not in custody for *Miranda* purposes during the period between the two interrogations because he was in the general prison population following his normal routine.⁹³ Moreover, the Court noted that the “inherently compelling pressures of custodial interrogation” were not present during the period between the interrogations because inmates at this facility could go to the library, take classes, and exercise.⁹⁴

In its most recent decision on *Miranda* warnings in the prison context, *Howes v. Fields*, decided in 2012, the Court held that there is no per se rule that a prisoner taken away from the general prison population to be interrogated about acts occurring outside the prison should receive *Miranda* warnings.⁹⁵ Defendant Randall Lee Fields was convicted of committing sexual acts with a minor and sentenced to ten to fifteen years in prison.⁹⁶ Relying on *Miranda*, Fields filed a motion with the state trial court to suppress the inculpatory statements he had made to deputies while being interrogated in the sheriff’s department of the jailhouse, but the motion was denied.⁹⁷ The Supreme Court overruled the Sixth Circuit’s bright-line rule that whenever a prisoner is isolated from the general prison population for interrogation, he or she must receive *Miranda* warnings, instead stating that custody is dependent on all of the circumstances of the interrogation.⁹⁸

⁹² *Id.* at 1224–25.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Howes*, 132 S. Ct. at 1185.

⁹⁶ *Id.* at 1186.

⁹⁷ *Id.* Fields appealed the admission of his custodial statement, but the Michigan Court of Appeals affirmed the trial court holding that Fields had not been in custody for *Miranda* purposes. *Id.* The Michigan Supreme Court denied certiorari to Fields. *Id.* Fields filed a pro se petition to the Federal District Court pursuant to 28 U.S.C. § 2254, arguing that the Michigan Court of Appeals unreasonably applied Supreme Court precedent and the District Court, conditionally granting his habeas petition, found in Fields’s favor. See Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254 (1996); *Howes*, 132 S. Ct. at 1186–87. The U.S. Court of Appeals for the Sixth Circuit found that the Michigan Court of Appeals made its decision in this case contrary to Supreme Court precedent as established in *Mathis* because the material facts in both cases were “indistinguishable.” *Fields*, 617 F.3d at 818–19. The Sixth Circuit found that Fields, like *Mathis*, was an inmate removed from the general prison population to be interrogated about an unrelated crime, and that *Miranda* warnings are required in those situations. *Id.* at 821–22.

⁹⁸ *Howes*, 132 S. Ct. at 1185, 1187 (refusing to “adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial”).

II. DELVING DEEPER INTO PRISON: ANIMALS LIVING IN A CAGE

The concept of custody is especially problematic in the prison context because courts must determine whether a prisoner, who is always in the custody of the prison, is also in custody for *Miranda* purposes during an interrogation.⁹⁹ In considering custody for *Miranda* purposes, courts consider the atmosphere of the interrogation to determine whether it amounts to a coercive atmosphere and would thus require *Miranda* warnings.¹⁰⁰ The brutal atmosphere of prison negatively impacts prisoners, and some argue that it produces more violence and crime.¹⁰¹ This Part will describe the inhumane atmosphere of prisons and illustrate its importance to the *Miranda* custody analysis for interrogated prisoners.¹⁰²

A. *What Is Prison?*

Prisoners are stripped of their privacy and agency; they have no control over when they eat, sleep, shower, or when they can call someone on the outside.¹⁰³ The conditions are degrading and the daily routine is a “constant reminder[] of their compromised social status and their stigmatized social role as prisoners.”¹⁰⁴

Prison cells are small and extremely cramped: the typical cell size in maximum-security prisons is sixty-square-feet.¹⁰⁵ In crowded prisons, which are becoming more common, two prisoners share this space,

⁹⁹ Chokshi, *supra* note 31, at 22.

¹⁰⁰ *Miranda v. Arizona*, 384 U.S. 436, 445 (1966).

¹⁰¹ ZIMBARDO, *supra* note 33, at 206.

¹⁰² See *Howes v. Fields*, 132 S. Ct. 1181, 1189–92 (2012) (analyzing the prison atmosphere to determine whether a prisoner is in custody for *Miranda* purposes); ZIMBARDO, *supra* note 33, at 206; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38–43.

¹⁰³ Haney, *supra* note 32, at 45.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* Federal prisons are divided into five security levels, but this Note will focus primarily on high security prisons. *Prison Types & General Information*, FEDERAL BUREAU OF PRISONS, <http://www.bop.gov/locations/institutions/index.jsp> (last visited Jan. 15, 2013). Minimum security institutions have limited or no perimeter fencing and are work- and program-oriented. *Id.* Low security Federal Correctional Institutions (FCIs) have double-fenced perimeters, contain dormitory or cubicle housing, and place particular emphasis on work programs. *Id.* Medium security FCIs may have electronic detection systems on the double fences and more internal controls, contain cell-type housing, and have some work and treatment programs. *Id.* High security prisons or U.S. Penitentiaries (USPs) have tight controls on inmates, cell-type housing for single or multiple occupants, and highly secured perimeters of walls or reinforced fences. *Id.*

which is the size of a king-sized bed.¹⁰⁶ Moreover, prisoners are required to live with few personal belongings.¹⁰⁷ Everything they own must fit in one small locker.¹⁰⁸ All of their possessions are subject to search, and guards often tear apart clothing, pillows, and any other items where contraband could be hidden.¹⁰⁹

The food in prison is frequently foul; prisoners often complain about finding insects and pieces of rodents in their food.¹¹⁰ Moreover, the living conditions can be so unsanitary that prisoners contract diseases, which can be deadly.¹¹¹ Despite this fact, the prison health care system does not have the resources to meet the demands of the prisoners, and unless someone is near-death, he will not receive treatment.¹¹²

The overcrowding of prisons itself has received substantial media attention.¹¹³ The number of Americans in jail or prison has risen from approximately 360,000 to over 2.3 million people during the past thirty-five years.¹¹⁴ The California state government is currently attempting to address its prison system's severe overcrowding because the U.S. Supreme Court recently found that its overcrowded prisons violated the Eighth Amendment's protection against cruel and unusual punishments.¹¹⁵

Furthermore, prisoners are placed in isolation, which some scholars suggest allows them to reflect on their crimes.¹¹⁶ This isolation

¹⁰⁶ Haney, *supra* note 32, at 35, 45.

¹⁰⁷ SANTOS, *supra* note 36, at 53.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Jeffrey Ian Ross, *Resisting the Carceral State: Prisoner Resistance from the Bottom Up*, 36 SOC. JUST. 28, 30 (2010).

¹¹¹ *Id.* Moreover, prisons often do not have air conditioning. SANTOS, *supra* note 36, at 17.

¹¹² Ross, *supra* note 110, at 31; Garrett Bauer, *Convicted of Insider Trading*, Speech at Boston College Law School (Feb. 23, 2012). The prison health care system is so poor that many prisoners avoid exercise out of fear that they will be injured and unable to obtain treatment. Bauer, *supra*.

¹¹³ See Alison Leigh Cowan & Christine Stuart, *In Connecticut Prisons, a System Long on People, Short on Space*, N.Y. TIMES, Oct. 17, 2007, at B1; Solomon Moore, *The Prison Overcrowding Fix*, N.Y. TIMES, Feb. 11, 2009, at A17.

¹¹⁴ Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 886 (2009). Over 2.3 million Americans is more than one in one hundred Americans. *Id.* at 886–87.

¹¹⁵ *Brown v. Plata*, 131 S. Ct. 1910, 1923 (2011); Jennifer Medina, *California Begins Moving Prisoners*, N.Y. TIMES, Oct. 9, 2011, at A14; see also Kyle T. Sullivan, Note, *To Free or Not to Free: Rethinking Release Orders Under the Prison Litigation Reform Act After Brown v. Plata*, 33 B.C. J.L. & SOC. JUST. (forthcoming Spring 2013) (detailing the Supreme Court's decision in *Brown v. Plata* and urging penal reform to reduce prison overcrowding).

¹¹⁶ FOUCAULT, *supra* note 32, at 236–37.

“guarantees that it is possible to exercise over them, with maximum intensity, a power that will not be overthrown by any other influence; solitude is the primary condition of total submission”¹¹⁷ Often, prisoners are not allowed to meet with anyone in the public with whom they did not have a relationship with before entering prison.¹¹⁸ As one prisoner explains, “[t]his system of ‘corrections’ hinders my ability to build mentor relationships with law-abiding citizens who can help my transition to society.”¹¹⁹

B. *Understanding the Perspective and Role of the Corrections Officer*

The role of the corrections officer is not to prepare prisoners to be proper citizens when they leave, but to ensure prison safety.¹²⁰ Thus, despite what corrections facility literature purports, the primary focus of corrections officers’ duties is not to inspire prisoners to become law-abiding citizens upon release.¹²¹ When corrections officers view incarcerated people as prisoners, not human beings, the institution fails to prepare prisoners to assimilate into civil society.¹²² Some guards demean and degrade the prisoners, while others simply show no sympathy or compassion to them.¹²³ Close interactions with prisoners are actually discouraged for fear that they could lead to friendships or relationships that would compromise security.¹²⁴ Administrators rarely make use of positive reinforcement to incentivize good behavior.¹²⁵ Rather, severe and immediate punishment is attached to every policy or rule because administrators fear the potentially disruptive, threatening prisoner.¹²⁶

¹¹⁷ *Id.* at 237.

¹¹⁸ SANTOS, *supra* note 36, at xxii. Prisoner Michael Santos was not allowed to meet with the head of the Criminology Department at an American college because they did not have a previously established relationship. *Id.*

¹¹⁹ *Id.* at xxii–xxiii.

¹²⁰ *Id.* at xxi.

¹²¹ *Id.*

¹²² *Id.*

¹²³ ZIMBARDO, *supra* note 33, at 207. The findings from Professor Philip Zimbardo’s Stanford Prison Experiment inform much of this and the next section of this Note. *Id.* While his experimental prison was not a “real prison,” it captured the psychological features of imprisonment and revealed what the prison experience is actually like. *Id.* In short, Professor Zimbardo’s experimental laboratory captures the conceptual and practical realities of prison. *Id.*

¹²⁴ See SANTOS, *supra* note 36, at 197. Sexual relationships between prisoners and staff members sometimes occur despite the harsh repercussions for such conduct. See *id.* at 203.

¹²⁵ See *id.* at 41.

¹²⁶ See *id.*

Many prisons have a zero tolerance policy in which the punishment is often disproportionate to the actual crime.¹²⁷

Prison employees may seem coldhearted at first blush, but they, too, have been hardened by the prison culture.¹²⁸ Their actions are often influenced by the amount of violence they see on a daily basis.¹²⁹ Moreover, they are influenced by society's portrayal of prisoners as "the other" who are "fundamental threat[s] to our cherished values and beliefs."¹³⁰ This perception leads the guards to treat prisoners in a dehumanizing way.¹³¹ Once the prisoner is labeled this way, "human beings are capable of totally abandoning their humanity for a mindless ideology, to follow and then exceed the orders of charismatic authorities to destroy everyone they label as 'The Enemy.'"¹³² The guards' ability to selectively engage and disengage their moral standards allows them to be "barbarically cruel in one moment and compassionate in the next."¹³³ It is the circumstances of the prison that lead guards to control in ways that they may not otherwise find morally acceptable.¹³⁴ As one prisoner explained, "The very nature of their job requires the officers to treat all prisoners as inanimate objects rather than fellow human beings. Their primary concern is security."¹³⁵ The same prisoner said:

With thousands of prisoners to manage, guards in large penal facilities consider prisoners the way fishermen consider the thousands of fish they haul in with a good netting. The job description requires the guards to treat each prisoner the same, so they make no effort to consider the individual. No

¹²⁷ *See id.* Of his tenure as a prisoner at Pelican Bay State Prison, Michael Santos observes:

The custody staff at Pelican Bay, indeed, the entire institution, is led by a management culture with zero tolerance for prisoners who violate the rules in any way. Those prisoners who do violate a rule, the federal court found, are met by a use of force that "is so strikingly disproportionate to the circumstances that it was imposed, more likely than not, for the purpose of causing harm, rather than a good faith effort to restore or maintain order."

Id. at 41.

¹²⁸ *Id.* at 52.

¹²⁹ *Id.*

¹³⁰ ZIMBARDO, *supra* note 33, at 10–11.

¹³¹ *See id.* at 10–11, 207.

¹³² *See id.* at 15, 207.

¹³³ *See id.* at 18.

¹³⁴ *See id.* at 19.

¹³⁵ SANTOS, *supra* note 36, at 4.

classifications separate rapacious predators from obvious prey. Everyone survives—or not—in the same pool.¹³⁶

The guards are “deindividuated” because their uniforms give them a common identity, which in turn changes their mental functioning.¹³⁷ That is, the guards’ feeling of personal accountability is reduced because they perform their roles in uniforms.¹³⁸ This deindividuation breeds violence and evil because the guards “live in an expanded-present moment that makes past and future distant and irrelevant.”¹³⁹ Guards engage in “cognitive dissonance” to rationalize their evil acts, by playing a public role in a way that may differ from their personal beliefs.¹⁴⁰

There are many examples of prison staff disrespecting prisoners without a second thought.¹⁴¹ Prison officials become dismissive of prisoners and tend to see them as members of a lower social class.¹⁴² This power leads them to do unconscionable acts.¹⁴³ For example, guards

¹³⁶ *Id.* at 11.

¹³⁷ See ZIMBARDO, *supra* note 33, at 219.

¹³⁸ See ZIMBARDO, *supra* note 33, at 219. William Golding’s novel, *Lord of the Flies*, describes how a simple change in one’s external appearance, painting one’s face, can dramatically alter one’s behavior. *Id.* at 219, 298.

¹³⁹ *Id.* at 219.

¹⁴⁰ *Id.*

¹⁴¹ SANTOS, *supra* note 36, at 122. Prisoner Michael Santos states that:

As I have been told by many correctional officers over the course of my imprisonment, the only thing lower than an inmate is an “inmate-lover,” a “hug-a-thug.” Those are the pejorative terms guards use to describe staff members who take the side of prisoners or fail to abide by the ethos of the prison administration. A powerful code of silence exists in the prison culture, meaning that staff members are expected to support one another, violations of truth or morality notwithstanding. Those who violate the code of silence risk open hostility from other staff. In such a culture, where prisoners are marginalized to a subhuman status, abuse runs rampant.

Id. at 41–42.

¹⁴² See Dolovich, *supra* note 114, at 933–35; see also SANTOS, *supra* note 36, at 49 (“Lord Acton wrote over one hundred years ago that power tends to corrupt and absolute power corrupts absolutely; unfortunately, that maxim has seemingly been proven true in the nation’s prison system.”).

¹⁴³ James Forman, Jr., *Education for Liberation*, 2 HARV. L. & POL’Y REV. 75, 75–76 (2008) (describing how guards choked, kneed, and punched a new youth offender after he ran out of breath during a forced run at a detention facility). For example, prisoner Michael Santos was forced to take off his wedding ring and when he questioned the officer regarding a policy authorizing him to keep it on, the guard responded: “I don’t give a fuck what you want, asshole. And don’t tell me about no policy. This is my hole and I’m running it.” SANTOS, *supra* note 36, at xxvi. The officer stood before Michael, who feared he was challenging him to a fight, and asked, “Now are you going to take the fuckin’ ring off or am I?” *Id.*

may abuse their power during strip searches, when prison policy requires that the guards search the crotch and genital areas of prisoners.¹⁴⁴ While the underlying safety concerns of strip searches are understandable, there is evidence that the searches also are intended to humiliate new inmates who are searched at booking.¹⁴⁵ Most guards try not to degrade the prisoners by conducting such thorough searches or watching them undress, but some engage in more invasive searches and purposefully watch prisoners undress in order to intimidate the prisoners.¹⁴⁶ Some guards who feel discomfort with the searches often engage in more intrusive behavior in order to fit in with their colleagues.¹⁴⁷

C. *Understanding the Circumstances of the Prisoner*

The poor treatment of prisoners leads to forms of resistance and adaptation.¹⁴⁸ Prison is a brutal place that invokes the worst in human nature.¹⁴⁹ Most researchers agree that living in a prison causes psychological harm, which leads to negative, long-term change in prisoners.¹⁵⁰ “Prisonization” and “institutionalization” are terms psychologists use to describe the negative psychological effects of imprisonment.¹⁵¹ One prisoner describes the effects in this way:

I hadn't yet grown used to my new status as a federal prisoner. The worst part, for me, was neither the chains nor the crippling restrictions on my movement. It was fighting the demons tormenting my mind about what my future held, that and having to live in the constant company of other prisoners, other people in chains whose history I didn't know and whose behavior I could not predict.¹⁵²

¹⁴⁴ Brenda V. Smith, *Watching You, Watching Me*, 15 YALE J.L. & FEMINISM 225, 281–82 (2003). Professor Smith argues that prisoners have a right to privacy similar to law-abiding citizens. *Id.* at 281. She advocates for same-gender supervision to provide a slight remedy for this degrading practice. *Id.*

¹⁴⁵ Dolovich, *supra* note 114, at 931; Smith, *supra* note 144, at 281–82.

¹⁴⁶ Smith, *supra* note 144, at 282. While in prison, incarcerated individuals are forced to use the bathroom and shower while being watched. Dolovich, *supra* note 114, at 932.

¹⁴⁷ Smith, *supra* note 144, at 282.

¹⁴⁸ Ross, *supra* note 110, at 40. Many believe prisoners adapt to the prison environment, but this makes it more difficult for them to cope upon release to normal life. John Bronsteen et al., *Retribution and the Experience of Punishment*, 98 CALIF. L. REV. 1463, 1486 (2010).

¹⁴⁹ ZIMBARDO, *supra* note 33, at 206.

¹⁵⁰ Haney, *supra* note 32, at 38.

¹⁵¹ *Id.*

¹⁵² SANTOS, *supra* note 36, at 3.

Prisons are dehumanizing for prisoners because they are stripped of their freedom and privacy until they lose their personal identities.¹⁵³ Prisoners are separated from “their past, their community, and their families” and become anonymous people whose behavior is dictated by guards.¹⁵⁴ They are forced to abandon their self-reliance and relinquish the freedom they had to make their own choices and decisions.¹⁵⁵ Moreover, officers are trained to call prisoners by their number, rather than their names, and told not to touch them so that the officers retain the power and to remind the prisoners they are a “lower class.”¹⁵⁶

Prisoners have a dim outlook on life because they are trained to believe that they will become nothing more than a prisoner in life.¹⁵⁷ So they plan for the next few hours, not life after prison.¹⁵⁸ A prisoner does not thrive in the prison system by being meritorious; rather it is his reputation that matters, which is enhanced by inciting violence.¹⁵⁹ Thus, prisoners have a different value system and they rise to the top by being uncooperative and unremorseful.¹⁶⁰ The prisoner who does not express guilt or cooperate with law enforcement authorities is most noble.¹⁶¹

Prisoners often turn against each other because they do not feel part of a supportive community.¹⁶² The conditions make them feel anonymous, which lead to “anti-social, self-interested behaviors.”¹⁶³ They hide their feelings from others, and sometimes “forget that they have any feelings at all,” in order to protect themselves from exploitation by the other prisoners.¹⁶⁴ They are then disinclined from building relation-

¹⁵³ ZIMBARDO, *supra* note 33, at 223; *see also* SANTOS, *supra* note 36, at 3 (“Being transported cross-country as a prisoner is a horribly dehumanizing experience.”).

¹⁵⁴ ZIMBARDO, *supra* note 33, at 223.

¹⁵⁵ Haney, *supra* note 32, at 40.

¹⁵⁶ Dolovich, *supra* note 114, at 932–33.

¹⁵⁷ SANTOS, *supra* note 36, at 27, 122. Prisoner Michael Santos states:

I knew that upon that distant release I would have no vehicle, no clothes, no place to live, no work unless I made something happen. The punishment for my crimes does not end with confinement. I knew that the bad decisions of my early twenties were going to afflict and shape the rest of my life, and I could also sense that the decisions I would make in the coming months and years would have an equal effect on my future.

Id. at 27.

¹⁵⁸ *Id.* at 122.

¹⁵⁹ *Id.* at 62.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *See* ZIMBARDO, *supra* note 33, at 25, 205.

¹⁶³ *See id.*

¹⁶⁴ Haney, *supra* note 32, at 42.

ships with other inmates and some withdraw from socializing altogether.¹⁶⁵

Prisoners may internalize the oppressiveness of the setting and turn against their fellow prisoners by watching them be humiliated by the guards.¹⁶⁶ This is called “identification with the aggressor.”¹⁶⁷ This occurred in Nazi concentration camps, where “prisoners internalized the power that was inherent in their oppressors.”¹⁶⁸ When the prisoner deludes himself in this way, he cannot realistically assess his situation and so he rebels against his fellow inmates.¹⁶⁹

It is evident that prisons are dangerous, and thus, prisoners must always be on the lookout for threats.¹⁷⁰ They are forced to be defensive and to avoid looking weak or inattentive.¹⁷¹ If a prisoner does not seem prepared for violence, other inmates will exploit him.¹⁷² Many male prisoners do not leave their cells without a weapon, and thus have found discrete ways to conceal their weapons.¹⁷³ Concealed weapons are preferred to larger ones, such as steel pipes, because they are less likely to be found by guards.¹⁷⁴ Many prisoners join gangs or cliques to protect themselves from attack.¹⁷⁵ One prisoner said, “[e]very prisoner in the penitentiary breathes only whispers away from extortion attempts, from savage gang rapes, from bludgeoning and stabbings.”¹⁷⁶ Another prisoner described this taut atmosphere by saying, “[t]hey are insects in a tank full of hungry lizards.”¹⁷⁷

It helps if prisoners enters with connections or street-tough credibility.¹⁷⁸ Every week, new prisoners enter the system, and “some pass[,] [s]ome do not.”¹⁷⁹ As such, gangs are also a way for prisoners to create a

¹⁶⁵ *Id.*

¹⁶⁶ ZIMBARDO, *supra* note 33, at 205.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Haney, *supra* note 32, at 41–42 (“[M]any prisoners are forced to become remarkably skilled ‘self-monitors’ who calculate the anticipated effects of every aspect of their behavior on the rest of the prison population.”).

¹⁷¹ *Id.* at 41.

¹⁷² *Id.*

¹⁷³ See SANTOS, *supra* note 36, at 51. For example, one prisoner concealed a needle he stole from the prison factory inside a pen. *Id.*

¹⁷⁴ See *id.*

¹⁷⁵ *Id.* at 101.

¹⁷⁶ See *id.* at 20–21.

¹⁷⁷ *Id.* at 94.

¹⁷⁸ *Id.* at 86.

¹⁷⁹ SANTOS, *supra* note 36, at 86.

community and make a life for themselves inside the penitentiary.¹⁸⁰ Gang leaders control the community, have connections with the guards, and are in charge of distributing food, alcohol, steroids, muscle-building supplements, sneakers, and sexual favors among the prisoners.¹⁸¹

For many prisoners, the biggest fear is prison rape.¹⁸² When prisoners enter the penitentiary for the first time, it is not uncommon for them to hear “catcalls.”¹⁸³ Those who become victims of sexual abuse sometimes believe their own death, or someone else’s, would be more tolerable.¹⁸⁴

III. *HOWES V. FIELDS*: A MISSED OPPORTUNITY

The Supreme Court’s finding in *Howes v. Fields* that Fields was not in *Miranda* custody when he was interrogated is inconsistent with its past decisions on *Miranda* custody in the prison context.¹⁸⁵ Moreover, when analyzing whether the interrogated prisoner should have received *Miranda* warnings in *Howes*, the Court minimized the harsh realities of the prison atmosphere.¹⁸⁶ Instead, it should have considered with greater nuance the psychological pressures that prisoners are under because it affects the circumstances of the interrogation.¹⁸⁷

A. *Howes v. Fields Is Inconsistent with Past Supreme Court Cases*

The Supreme Court recently had an opportunity to closely examine the prison atmosphere with its discussion of whether a prisoner must receive *Miranda* warnings before being interrogated.¹⁸⁸ The issue before the Court was whether its earlier cases created clearly established law “that the questioning of a prisoner is always custodial when the prisoner is removed from the general prison population and questioned about events that occurred outside the prison.”¹⁸⁹ In reversing

¹⁸⁰ *Id.* at 102, 110.

¹⁸¹ *Id.* at 108–09.

¹⁸² *Id.* at 86.

¹⁸³ *Id.* at 93.

¹⁸⁴ *Id.* at 86.

¹⁸⁵ See *Howes v. Fields*, 132 S. Ct. 1181, 1187–89 (2012); *Maryland v. Shatzer*, 130 S. Ct. 1213, 1224–25 (2010); *Illinois v. Perkins*, 496 U.S. 292, 294–97 (1990); *Mathis v. United States*, 391 U.S. 1, 2–5 (1968).

¹⁸⁶ See *Howes*, 132 S. Ct. at 1189–92.

¹⁸⁷ See *id.*; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1306, 1314–16; Hancy, *supra* note 32, at 38–43.

¹⁸⁸ See *Howes*, 132 S. Ct. at 1189–92.

¹⁸⁹ *Id.* at 1185, 1187.

the Sixth Circuit's decision, the Court held that its previous decisions did not clearly establish this categorical rule.¹⁹⁰

The Court was correct not to find a per se rule given its previous holdings.¹⁹¹ In *Illinois v. Perkins*, the Court stated “[t]he bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official”¹⁹² In *Maryland v. Shatzer*, the Court explicitly declined to adopt a per se rule, stating that *Miranda* custody in the prison context would “depend upon whether [incarceration] exerts the coercive pressure that *Miranda* was designed to guard against—the ‘danger of coercion [that] results from the *interaction* of custody and official interrogation.’”¹⁹³ Moreover, the Court said the Sixth Circuit was wrong to rely on *Mathis v. United States* because the *Mathis* Court did not find that imprisonment alone requires *Miranda* warnings.¹⁹⁴

Although the Court was correct not to find a per se rule, the rest of its decision in *Howes* is inconsistent with its past decisions on *Miranda* custody in the prison context.¹⁹⁵ Given the Court's past decisions, it should have found that Fields was entitled to *Miranda* warnings because he was interrogated for five to seven hours in an unfamiliar setting by enforcement officers away from the prison population.¹⁹⁶

The circumstances of Fields's interrogation are unlike that of the suspect in *Perkins* where the Court admitted the confession into evidence even though he had not received his *Miranda* warnings.¹⁹⁷ The suspect in *Perkins* confessed to undercover agents in his cell, which the Court held did not amount to the coercive atmosphere *Miranda* sought to remedy because he thought he was speaking to fellow inmates.¹⁹⁸ By

¹⁹⁰ *Id.* at 1185. The Court found that the Sixth Circuit erred in permitting federal habeas relief under the Antiterrorism and Effective Death Penalty Act of 1996. See Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d)(1) (1996); *Howes*, 132 S. Ct. at 1185. A federal court may allow a state prisoner's federal habeas petition “if the state-court adjudication pursuant to which the prisoner is held ‘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.’” *Howes*, 132 S. Ct. at 1187 (quoting 28 U.S.C. § 2254(d)(1)).

¹⁹¹ See *Howes*, 132 S. Ct. at 1187–89; *id.* at 1194 (Ginsburg, J., concurring in part and dissenting in part).

¹⁹² *Perkins*, 496 U.S. at 299.

¹⁹³ *Shatzer*, 130 S. Ct. at 1224 (quoting *Perkins*, 496 U.S. at 297).

¹⁹⁴ *Howes*, 132 S. Ct. at 1188.

¹⁹⁵ See *Shatzer*, 130 S. Ct. at 1224–25; *Perkins*, 496 U.S. at 294–97; *Mathis*, 391 U.S. at 2–5.

¹⁹⁶ See *Shatzer*, 130 S. Ct. at 1224–25; *Perkins*, 496 U.S. at 294–97; *Mathis*, 391 U.S. at 2–5; Brief for the Respondent, *supra* note 2, at 2.

¹⁹⁷ See *Howes*, 132 S. Ct. at 1185–87; *Perkins*, 496 U.S. at 294–96.

¹⁹⁸ See *Perkins*, 496 U.S. at 296.

contrast, Fields was isolated from his fellow inmates against his will, and rather than being questioned in his cell by people whom he thought were his cellmates, he was questioned by law enforcement officers in a conference room where he had never been before.¹⁹⁹ These differences should have led the Court to hold that “his ‘freedom of action [was] curtailed in [a] significant way.’”²⁰⁰ Unlike the suspect in *Perkins*, Fields was in a coercive environment and so he should have received *Miranda* warnings.²⁰¹

The circumstances of Fields’s interrogation are similar to that of the suspects in *Mathis* and *Shatzer*, who were found to be in custody for *Miranda* purposes.²⁰² In both instances the suspects were isolated from the general prison population and interrogated for offenses unconnected to the crime for which they were imprisoned.²⁰³ Fields was similarly isolated from the general prison population and questioned about an unconnected offense, which supports a finding that he was in custody.²⁰⁴

Considerations such as the setting of the interrogation, including whether it occurred in a familiar place where the suspect felt comfortable, have also proved important for the *Miranda* custody analysis.²⁰⁵ For example, the Court has determined that police questioning of a child at his school could be a custodial interrogation.²⁰⁶ Additionally, interrogating a suspect in his bedroom at four a.m. where he was not allowed to leave was deemed to be a custodial interrogation requiring *Miranda* warnings.²⁰⁷ In both of these cases, the suspects were in familiar settings—one’s school and the other’s bedroom—and yet the Court found their freedom of movement was restricted and therefore they were considered to be in custody for *Miranda* purposes.²⁰⁸ Unlike the above cases, Fields was not in a familiar setting because he was in a part

¹⁹⁹ See *Howes*, 132 S. Ct. at 1185; Brief for the Respondent, *supra* note 2, at 2.

²⁰⁰ See *Howes*, 132 S. Ct. at 1194 (Ginsburg, J., concurring in part and dissenting in part); *Miranda*, 384 U.S. at 467.

²⁰¹ See *Howes*, 132 S. Ct. at 1194–95 (Ginsburg, J., concurring in part and dissenting in part); *Perkins*, 496 U.S. at 294.

²⁰² See *Howes*, 132 S. Ct. at 1185–87; *Shatzer*, 130 S. Ct. at 1224–25; *Mathis*, 391 U.S. at 2–3.

²⁰³ *Shatzer*, 130 S. Ct. at 1217–18, 1224–25; *Mathis*, 391 U.S. at 2–3.

²⁰⁴ See *Howes*, 132 S. Ct. at 1185–87, 1189; *Shatzer*, 130 S. Ct. at 1224–25; *Mathis*, 391 U.S. at 2–3.

²⁰⁵ See, e.g., *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2398–99, 2408 (2011); *Orozco v. Texas*, 394 U.S. 324, 325–27 (1969).

²⁰⁶ *J.D.B.*, 131 S. Ct. at 2408.

²⁰⁷ *Orozco*, 394 U.S. at 325–27.

²⁰⁸ See *J.D.B.*, 131 S. Ct. at 2398–99, 2408; *Orozco*, 394 U.S. at 325–27.

of the jail that he had never been before and he did not know how to get back to his cell.²⁰⁹ Thus, the location of Fields's interrogation does not tame the inherently coercive aspects of police interrogation as the Supreme Court found; rather it suggests that he was in custody.²¹⁰

The length of the interrogation and whether the suspect was "completely at the mercy of the police" are also important considerations in determining whether the "suspect's freedom of action [wa]s curtailed to a 'degree associated with formal arrest.'"²¹¹ Fields was at the mercy of the police because he did not feel he had freedom to leave the interrogation.²¹² In her dissenting opinion in *Howes*, Justice Ginsburg disagreed with the majority that a reasonable person in Fields's situation "would have felt free to terminate the interview and leave" given these facts.²¹³ She concluded that Fields was in a custodial interrogation because he had not volunteered to do the interview with the armed deputies that lasted long into the night, nor was he told that he had the right to decline the interrogation.²¹⁴ Although Fields told the deputies multiple times that he wanted to end the interrogation, the questioning continued.²¹⁵ Justice Ginsburg argued that Fields's freedom of movement was significantly curtailed because he "was subjected to 'incommunicado interrogation . . . in a police-dominated atmosphere,'" and he "was placed, against his will, in an inherently stressful situation."²¹⁶

B. *The Court in Howes v. Fields Minimized the Negative Effects of Prisons in Its Miranda Custody Analysis*

In analyzing whether Fields was in custody during the interrogation for *Miranda* purposes, the Court did not adequately consider the negative effects of the prison atmosphere.²¹⁷ Instead, the Court minimized the effects of the prison atmosphere by analyzing three elements

²⁰⁹ See Brief for the Respondent, *supra* note 2, at 2.

²¹⁰ See *Howes*, 132 S. Ct. at 1194–95; *J.D.B.*, 131 S. Ct. at 2401; *Orozco*, 394 U.S. at 325–27; Brief for the Respondent, *supra* note 2, at 2; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38–43.

²¹¹ See *Berkemer v. McCarty*, 468 U.S. 420, 437–40 (1984).

²¹² See *id.*; Brief for the Respondent, *supra* note 2, at 2. The interrogation lasted between five and seven hours. See Brief for the Respondent, *supra* note 2, at 2. One of the deputies who interrogated Fields said that he had never before been a part of an interrogation of that length. *Id.* at 4.

²¹³ *Howes*, 132 S. Ct. at 1195 (Ginsburg, J., concurring in part and dissenting in part).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 1194.

²¹⁷ See *id.* at 1189–92 (majority opinion).

of the Sixth Circuit's per se rule: (1) the fact that the suspect is in prison; (2) that the interrogation took place outside of the general prison population; and (3) that it was about events occurring outside of the prison.²¹⁸

First, the Court said "imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*."²¹⁹ The Court reasoned that the interrogation process is not as shocking for a prisoner as it is for someone taken from his home to be questioned.²²⁰ As such, a prisoner is used to having his freedom restricted and thus does not encounter the same "inherently compelling pressures" and shock that a free person would during an interrogation.²²¹ Therefore, the Court reasoned that a prisoner feels no pressure to confess in order to end the interrogation because a prisoner knows he will not be released at the end of the questioning, but will remain incarcerated.²²² According to the Court, a prisoner's familiarity with the legal system ensures awareness that the officers interrogating him have no power to reduce his current sentence; however, an ordinary person might overestimate the power of the interrogating officer and confess in an effort to obtain more lenient treatment.²²³

Second, the Court found that isolating a prisoner from the general prison population is in his best interest.²²⁴ A prisoner, the Court reasoned, is not taken from the supportive environment comprised of his family and friends.²²⁵ Rather, he is taken away from a population that may be hostile and may react negatively to the interrogation process.²²⁶ The Court acknowledged that removing the prisoner from the general population may further restrain the prisoner because of the additional safeguards that must be put in place, but the Court felt that prisoners become accustomed to such restraints.²²⁷

Third, the Court found that the questioning of the prisoner about crimes occurring outside of the prison was no more likely to be coercive than questioning about crimes occurring inside the prison because

²¹⁸ See *id.*; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38–43.

²¹⁹ *Howes*, 132 S. Ct. at 1190.

²²⁰ *Id.*

²²¹ *Id.* at 1190–91.

²²² *Id.* at 1191.

²²³ *Id.*

²²⁴ *Id.* at 1191–92.

²²⁵ *Howes*, 132 S. Ct. at 1191–92.

²²⁶ *Id.*

²²⁷ *Id.* at 1192.

either could lead to criminal punishment.²²⁸ Thus, because prisoners are familiar with the legal system, the isolated interrogation is considered to be in their best interest, and because the questioning about crimes occurring outside of prison is not more likely to be coercive, the Court did not uphold the Sixth Circuit's per se rule.²²⁹

While the Court in *Howes* did consider the conditions of the prison, it wrongly minimized the negative effects of the atmosphere on the prisoner.²³⁰ The Court should not have minimized the violent and dehumanizing atmosphere of the prison because its psychological effects do not cease when the prisoner enters the interrogation room.²³¹ Rather than grasping the negative effects of the prison atmosphere, the Court reasoned that Fields, like all prisoners, is more comfortable in an interrogation atmosphere than a non-prisoner would be.²³² Yet Fields's yelling and agitation during the interrogation demonstrates that the law enforcement interrogators did not "quell the psychological and tactical pressures inherent in the course" of interrogation to ensure a voluntary confession.²³³ The Court also found that isolating a prisoner from the general prison population is in his best interest because, unlike a free person, the prisoner is not taken from a supportive, comfortable environment for the interrogation.²³⁴ In this way, the Court minimized the fact that prisoners have already been taken away from their family and friends, and used the fact instead to prove that interrogations in prisons are not coercive because prisoners have grown accustomed to their isolated situation.²³⁵ While it is true that many prisoners do not feel like they are members of a supportive community, the

²²⁸ *Id.*

²²⁹ *Id.* Many scholars urged the Supreme Court to uphold the Sixth Circuit's per se rule because prisoners are always under arrest and their freedom is always restrained. See Berg, *supra* note 37, at 472, 481–82; Dominguez, *supra* note 37, at 1306, 1314–16. The Obama administration and the State of Michigan argued that it would "threaten prison order" to give *Miranda* warnings in this context. Lincoln Caplan & Dorothy Samuels, *Approaching the Bench, in Search of Answers*, N.Y. TIMES, Oct. 2, 2011, at SR10.

²³⁰ See Berg, *supra* note 37, at 455–56; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38–43.

²³¹ See Berg, *supra* note 37, at 455–56; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38–43.

²³² See *Howes*, 132 S. Ct. at 1190–92; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38.

²³³ See *Howes*, 132 S. Ct. at 1186; Berg, *supra* note 37, at 455–56; Dominguez, *supra* note 37, at 1306, 1314–16; Haney, *supra* note 32, at 38.

²³⁴ *Howes*, 132 S. Ct. at 1191–92.

²³⁵ See *id.*; ZIMBARDO, *supra* note 33, at 223; Haney, *supra* note 32, at 38–43.

Court should not ignore that incarceration causes long-term psychological harm to prisoners.²³⁶

IV. FUTURE COURTS SHOULD ACCOUNT FOR THE NEGATIVE EFFECTS OF PRISON IN THEIR *MIRANDA* CUSTODY ANALYSIS

The Supreme Court in *Miranda v. Arizona* sought to end destructive police tactics and stressed the importance of protecting an interrogated suspect's Fifth Amendment right against self-incrimination, stating:

The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.²³⁷

The fears of the *Miranda* Court are resurfacing almost a half-century later in the context of prison interrogations because prisons often present the coercive atmosphere that the Court attempted to prevent in 1966.²³⁸ Prisons present this risk because of their isolating, degrading conditions.²³⁹ Prisons dehumanize inmates by depriving them of their freedom and privacy.²⁴⁰ Moreover, prison guards exercise pitiless power over prisoners because they have been hardened by prison culture.²⁴¹

The Supreme Court has significantly narrowed the scope of *Miranda's* protections since it was decided in 1966.²⁴² In 2012, in *Howes v. Fields*, the Court further narrowed *Miranda's* protections by finding that prisoners are not entitled to *Miranda* warnings so long as the police simply tell them that they are free to terminate the interrogation and return to their cells.²⁴³ The decision in *Howes* hampers *Miranda's*

²³⁶ See ZIMBARDO, *supra* note 33, at 25, 223; Haney, *supra* note 32, at 38–43.

²³⁷ *Miranda v. Arizona*, 384 U.S. 436, 457–58 (1966).

²³⁸ *Id.*; see Berg, *supra* note 37, at 455–56; Dominguez, *supra* note 37, at 1314–16; Haney, *supra* note 32, at 38–43.

²³⁹ See FOUCAULT, *supra* note 32, at 236–37; Haney, *supra* note 32, at 45.

²⁴⁰ ZIMBARDO, *supra* note 33, at 223.

²⁴¹ See SANTOS, *supra* note 36, at xxi, 4; ZIMBARDO, *supra* note 33, at 207.

²⁴² See Dearborn, *supra* note 43, at 369.

²⁴³ See *Howes v. Fields*, 132 S. Ct. 1181, 1192–94 (2012); Dearborn, *supra* note 43, at 369.

efforts to protect suspects from the compelling atmosphere of interrogation and to ensure that confessions are made voluntarily.²⁴⁴

While the Court was correct not to find a *per se* rule, the *Howes* Court should have given more weight to the fact that the negative psychological effects of incarceration remain with prisoners when they are taken outside of the general prison population for interrogation.²⁴⁵ In the future, lower courts should follow the Court's established *Miranda* test by looking at all of the circumstances of the interrogation, but, in doing so, they should utilize a better understanding of the negative effects of prisons on prisoners.²⁴⁶ After all, the objective test is from the perspective of a reasonable person *in the circumstances*.²⁴⁷ Therefore, courts should consider whether a reasonable prisoner, given the circumstances, would have felt free to leave.²⁴⁸

Accordingly, when confronted with the question of whether a suspect in prison is in custody for *Miranda* purposes, future courts should consider factors that account for the coercive atmosphere prisoners face and the physical and psychological power prison guards exert over prisoners.²⁴⁹ Specifically, courts should consider factors such as: the language used to summon a prisoner from his cell and whether he was given the opportunity to deny speaking with officers at the outset; whether the prisoner was told he could leave once the interrogation began; whether the officers withheld necessities such as food, water, bathroom breaks, or medications; whether the prisoner was physically restrained; whether the officers were armed; whether the interrogation took place in a familiar place where the suspect felt comfortable; and the length of the interrogation.²⁵⁰ By examining the above factors for signs of coercion, future courts can ensure that any statement obtained from a prisoner is freely given.²⁵¹

²⁴⁴ See *Howes*, 132 S. Ct. at 1192–94; *Miranda*, 384 U.S. at 467; Haney, *supra* note 32, at 38–43.

²⁴⁵ See *Howes*, 132 S. Ct. at 1187–89; *id.* at 1194 (Ginsburg, J., concurring in part and dissenting in part); Haney, *supra* note 32, at 38–43.

²⁴⁶ See Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1311–14; Haney, *supra* note 32, at 38–43.

²⁴⁷ *Howes*, 132 S. Ct. at 1189.

²⁴⁸ See *id.*

²⁴⁹ See SANTOS, *supra* note 36, at xxi, 4; ZIMBARDO, *supra* note 33, at 207; Haney, *supra* note 32, at 38–43.

²⁵⁰ See *Howes*, 132 S. Ct. at 1194–95 (Ginsburg, J., concurring in part and dissenting in part); *Fields v. Howes*, 617 F.3d 813, 820 (6th Cir. 2010), *rev'd*, 132 S. Ct. 1181 (2012).

²⁵¹ See *Howes*, 132 S. Ct. at 1194–95 (Ginsburg, J., concurring in part and dissenting in part); Berg, *supra* note 37, at 475.

In analyzing Fields's interrogation in *Howes*, the Court went through the motions of examining the totality of the circumstances surrounding the interrogation; however, it failed to acknowledge the clear signs indicating that Fields did not feel free to leave.²⁵² The Court recognized the length of Fields's interrogation and the fact that the deputies were armed and spoke with a sharp tones indicated a custodial atmosphere.²⁵³ The Court ultimately, however, found these factors were outweighed by the facts that Fields was not physically restrained, that he was told he could leave, that the room was well-lit, and that the door to the interrogation room was sometimes open.²⁵⁴

The *Howes* Court emphasized that Fields was told he could leave at any time, but Fields said he was well aware that he could not freely leave.²⁵⁵ This is likely because of the controls he grew accustomed to in prison, where he gave up all of his freedoms.²⁵⁶ Upon incarceration, prisoners are forced to abandon their self-reliance and relinquish their freedom, and this mindset does not simply disappear when prisoners enter the interrogation room.²⁵⁷ Prisoners know they cannot move about freely; instead they are trained to be complicit in officer's requests at the risk of severe and immediate punishment.²⁵⁸

Further, the *Howes* Court did not adequately grasp Fields's perception of the armed sheriffs' power over him; he felt intimidated by them, likely because armed prison guards tend to treat prisoners like inanimate objects.²⁵⁹ Fields was not asked whether he wished to speak with the officers; instead he was taken from his cell to a conference room in the guard's quarters of the jail.²⁶⁰ Questioning that occurs in the guard's quarters—a place where a reasonable prisoner would not feel comfortable—is inherently more coercive than questioning done in a place more familiar to a prisoner such as a visiting or interview

²⁵² *Howes*, 132 S. Ct. at 1189, 1194; *id.* at 1194–95 (Ginsburg, J., concurring in part and dissenting in part).

²⁵³ *Id.* at 1193 (majority opinion).

²⁵⁴ *Id.*

²⁵⁵ *Id.*; Brief for the Respondent, *supra* note 2, at 2. “There was no freedom to leave. I mean, I was trapped. I couldn’t—even if I would have gotten up and left, I wouldn’t have known how to get back to the jail. The door was locked and there was no place for me to go.” Brief for the Respondent, *supra* note 2, at 2.

²⁵⁶ ZIMBARDO, *supra* note 33, at 223.

²⁵⁷ See Haney, *supra* note 32, at 40.

²⁵⁸ See SANTOS, *supra* note 36, at 41.

²⁵⁹ See *id.* at 4. “He felt intimidated by the situation because both deputies had guns” Brief for the Respondent, *supra* note 2, at 2.

²⁶⁰ *Howes*, 132 S. Ct. at 1195 (Ginsburg, J., concurring in part and dissenting in part).

room.²⁶¹ Fields was beholden to the guards because he was taken to a part of the jail that he was not familiar with and, without their help, he did not know how to get back to his cell.²⁶² Furthermore, despite telling the officers multiple times that “he did not want to speak with them anymore,” he was questioned into the early morning.²⁶³ For these reasons, it is important that prisoners are not merely told by officers that they are free to leave, but that the officers’ actions and the circumstances during the interrogation demonstrate to the prisoner that he is at liberty to end the interrogation and return to his cell.²⁶⁴

Even though *Howes* did not adequately address the brutalizing atmosphere of prisons, lower courts have the ability to do so without violating *Howes* because the Supreme Court in *Howes* gave the lower courts flexibility by not finding a per se rule and instead outlining the objective all-of-the-circumstances test.²⁶⁵ The *Howes* Court stated that “[w]hen a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation” and that a prisoner who is found to be in *Miranda* custody will be entitled to *Miranda* protections.²⁶⁶ This objective test allows the courts to incorporate the negative psychological effects of prisons into their custody analysis, which will protect interrogated prisoners from the pressures the *Miranda* Court feared.²⁶⁷ By coupling the wretchedness that comes with being a prisoner and the coercive characteristics of prison interrogations, courts should find that interrogated prisoners are usually entitled to *Miranda* warnings.²⁶⁸

While the Court in *Howes* stated that the *Miranda* analysis should focus on the features of the interrogation, it is important to recognize that prisoners are influenced by what they learn outside of the interro-

²⁶¹ See *id.* at 1195; Brief for the Respondent, *supra* note 2, at 1–2; SANTOS, *supra* note 36, at 41.

²⁶² See Brief for the Respondent, *supra* note 2, at 2.

²⁶³ *Howes*, 132 S. Ct. at 1186 (quoting *Fields*, 617 F.3d at 815).

²⁶⁴ See Dominguez, *supra* note 37, at 1313–14.

²⁶⁵ *Howes*, 132 S. Ct. at 1187–89; see Sherry F. Colb, *Why Interrogation in Jail May Not Count As “Custodial”: The Supreme Court Makes New Law in Howes v. Fields*, JUSTICIA.COM: VERDICT (Mar. 28, 2012), available at <http://verdict.justia.com/2012/03/28/why-interrogation-in-jail-may-not-count-as-custodial-the-supreme-court-makes-new-law-in-howes-v-fields-2>; Swati S. Desai, *Prison Is Not a Custodial Environment for Miranda Purposes*, LITIGATION NEWS FROM THE ABA SECTION OF LITIGATION (Apr. 25, 2012), available at <http://apps.americanbar.org/litigation/litigationnews/mobile/article-prison-miranda-sixth-circuit.html>.

²⁶⁶ *Howes*, 132 S. Ct. at 1192.

²⁶⁷ See *id.*; Berg, *supra* note 37, at 475; Haney, *supra* note 32, at 38–43.

²⁶⁸ See *Howes*, 132 S. Ct. at 1194–95 (Ginsburg, J., concurring in part and dissenting in part); Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1313–15; Haney, *supra* note 32, at 38–43.

gation.²⁶⁹ The prison environment negatively affects prisoners such that they may feel coerced during interrogations and therefore need to be advised of their *Miranda* rights.²⁷⁰ The fact that the cruel and inhumane prison environment seeps into the interrogation room is a factor that should be acknowledged when analyzing whether a given interrogation amounts to the coercion feared by the *Miranda* Court.²⁷¹ By incorporating a better understanding of the negative psychological aspects of prisons into the *Miranda* totality analysis, prisoners will be given some protection from the coercive interrogations that *Miranda* sought to avoid.²⁷²

CONCLUSION

The concept of custodial interrogation is especially difficult in the prison context because prisoners are always in the custody of the prison. But, in order to be deemed in custody for *Miranda* purposes, courts look at whether one's freedom of movement was deprived in any significant way. Courts consider all of the circumstances of the interrogation to determine whether a reasonable person would have felt restraint on his freedom of movement similar to an arrest. This allows courts to determine whether the situation amounts to the inherently coercive atmosphere that the Supreme Court was trying to prevent with *Miranda*. Nevertheless, when given the chance in *Howes v. Fields*, the Supreme Court did not adequately consider the negative psychological and sociological effects that incarceration has on prisoners in its *Miranda* custody analysis. Moreover, the Court's decision was inconsistent with its past decisions applying the *Miranda* custody analysis in the prison context. It is important for courts to consider the wretchedness of prison life, as described in this Note, in order to protect prisoners' *Miranda* privileges in the future. Specifically, courts need to consider what life is like in prison and the negative effects of the atmosphere on prisoners in order to better assess if the inherently compelling pressures of custodial interrogation exist.

²⁶⁹ See *Howes*, 132 S. Ct. at 1192; ZIMBARDO, *supra* note 33, at 223; Haney, *supra* note 32, at 38–43.

²⁷⁰ See ZIMBARDO, *supra* note 33, at 223; Berg, *supra* note 37, at 475; Dominguez, *supra* note 37, at 1311–15; Haney, *supra* note 32, at 38–43.

²⁷¹ See ZIMBARDO, *supra* note 33, at 223; Berg, *supra* note 37, at 475; Haney, *supra* note 32, at 38–43.

²⁷² *Miranda*, 384 U.S. at 457–58; see ZIMBARDO, *supra* note 33, at 223; Berg, *supra* note 37, at 475; Haney, *supra* note 32, at 38–43.