

130 S. Ct. 1213; 175 L. Ed. 2d 1045, \*;  
2010 U.S. LEXIS 1899, \*\*; 22 Fla. L. Weekly Fed. S 135

**MARYLAND, PETITIONER v. MICHAEL BLAINE SHATZER, SR.**

**No. 08-680**

**SUPREME COURT OF THE UNITED STATES**

*130 S. Ct. 1213; 175 L. Ed. 2d 1045; 2010 U.S. LEXIS 1899; 22 Fla. L. Weekly Fed. S 135*

**October 5, 2009, Argued  
February 24, 2010, Decided**

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether a break in custody ends the presumption of involuntariness established in *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981).

I

In August 2003, a social worker assigned to the Child Advocacy Center in the Criminal Investigation Division of the Hagerstown Police Department referred to the department allegations that respondent Michael Shatzer, Sr., had sexually abused his 3-year-old son. At that time, Shatzer was incarcerated at the Maryland Correctional Institution-Hagerstown, serving a sentence for an unrelated child-sexual-abuse offense. Detective Shane Blankenship was assigned to the investigation and interviewed Shatzer at the correctional institution on August 7, 2003. Before asking any questions, Blankenship reviewed Shatzer's *Miranda* rights with him, and obtained a written waiver of those rights. When Blankenship explained that he was there to question Shatzer about sexually abusing his son, Shatzer expressed confusion -- he had thought Blankenship was an attorney there to discuss the prior crime for which he was incarcerated. Blankenship clarified the purpose of his visit, and Shatzer declined to speak without an attorney. Accordingly, Blankenship ended the interview, and Shatzer was released back into the general prison population. Shortly thereafter, Blankenship closed the investigation.

Two years and six months later, the same social worker referred more specific allegations to the department about the same incident involving Shatzer. Detective Paul Hoover, from the same division, was assigned to the investigation. He and the social worker interviewed the victim, then eight years old, who described the incident in more detail. With this new information in hand, on March 2, 2006, they went to the Roxbury Correctional Institute, to which Shatzer had since been transferred, and interviewed Shatzer in a maintenance room outfitted with a desk and three chairs. Hoover explained that he wanted to ask Shatzer about the alleged incident

involving Shatzer's son. Shatzer was surprised because he thought that the investigation had been closed, but Hoover explained they had opened a new file. Hoover then read Shatzer his *Miranda* rights and obtained a written waiver on a standard department form.

Hoover interrogated Shatzer about the incident for approximately 30 minutes. Shatzer denied ordering his son to perform fellatio on him, but admitted to masturbating in front of his son from a distance of less than three feet. Before the interview ended, Shatzer agreed to Hoover's request that he submit to a polygraph examination. At no point during the interrogation did Shatzer request to speak with an attorney or refer to his prior refusal to answer questions without one.

Five days later, on March 7, 2006, Hoover and another detective met with Shatzer at the correctional facility to administer the polygraph examination. After reading Shatzer his *Miranda* rights and obtaining a written waiver, the other detective administered the test and concluded that Shatzer had failed. When the detectives then questioned Shatzer, he became upset, started to cry, and incriminated himself by saying, "I didn't force him. I didn't force him." 405 Md. 585, 590, 954 A.2d 1118, 1121 (2008). After making this inculpatory statement, Shatzer requested an attorney, and Hoover promptly ended the interrogation.

\* \* \*

[Shatzer pleaded not guilty, waived his right to a jury trial, and proceeded to a bench trial based on an agreed statement of facts. The trial court found Shatzer guilty of sexual child abuse of his son.]

Over the dissent of two judges, the Court of Appeals of Maryland reversed and remanded. The court held that "the passage of time *alone* is insufficient to [end] the protections afforded by *Edwards*," and that, assuming, *arguendo*, a break-in-custody exception to *Edwards* existed, Shatzer's release back into the general prison population between interrogations did not constitute a break in custody. 405 Md., at 606-607, 954 A. 2d, at 1131. We

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granted certiorari, 555 U.S. \_\_\_, 129 S. Ct. 1043, 173 L. Ed. 2d 468 (2009).

## II

\* \* \* \*

To counteract the coercive pressure, *Miranda* announced that police officers must warn a suspect prior to questioning that he has a right to remain silent, and a right to the presence of an attorney. *Id.*, at 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694. After the warnings are given, if the suspect indicates that he wishes to remain silent, the interrogation must cease. *Id.*, at 473-474, 86 S. Ct. 1602, 16 L. Ed. 2d 694. Similarly, if the suspect states that he wants an attorney, the interrogation must cease until an attorney is present. *Id.*, at 474, 86 S. Ct. 1602, 16 L. Ed. 2d 694. Critically, however, a suspect can waive these rights. *Id.*, at 475, 86 S. Ct. 1602, 16 L. Ed. 2d 694. To establish a valid waiver, the State must show that the waiver was knowing, intelligent, and voluntary under the "high standar[d] of proof for the waiver of constitutional rights [set forth in] *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938)." *Id.*, at 475, 86 S. Ct. 1602, 16 L. Ed. 2d 694.

In *Edwards*, the Court determined that *Zerbst's* traditional standard for waiver was not sufficient to protect a suspect's right to have counsel present at a subsequent interrogation if he had previously requested counsel; "additional safeguards" were necessary. 451 U.S., at 484, 101 S. Ct. 1880, 68 L. Ed. 2d 378. The Court therefore superimposed a "second layer of prophylaxis," *McNeil v. Wisconsin*, 501 U.S. 171, 176, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991). *Edwards* held:

"[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. . . . [He] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." 451 U.S., at 484-485, 101 S. Ct. 1880, 68 L. Ed. 2d 378.

The rationale of *Edwards* is that once a suspect indicates that "he is not capable of undergoing [custodial] questioning without advice of counsel," "any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the

'inherently compelling pressures' and not the purely voluntary choice of the suspect." *Arizona v. Roberson*, 486 U.S. 675, 681, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (1988). Under this rule, a voluntary *Miranda* waiver is sufficient at the time of an initial attempted interrogation to protect a suspect's right to have counsel present, but it is not sufficient at the time of subsequent attempts if the suspect initially requested the presence of counsel. The implicit assumption, of course, is that the subsequent requests for interrogation pose a significantly greater risk of coercion. That increased risk results not only from the police's persistence in trying to get the suspect to talk, but also from the continued pressure that begins when the individual is taken into custody as a suspect and sought to be interrogated -- pressure likely to "increase as custody is prolonged," *Minnick v. Mississippi*, 498 U.S. 146, 153, 111 S. Ct. 486, 112 L. Ed. 2d 489 (1990). The *Edwards* presumption of involuntariness ensures that police will not take advantage of the mounting coercive pressures of "prolonged police custody," *Roberson*, 486 U.S., at 686, 108 S. Ct. 2093, 100 L. Ed. 2d 704, by repeatedly attempting to question a suspect who previously requested counsel until the suspect is "badgered into submission," *id.*, at 690, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (KENNEDY, J., dissenting).

We have frequently emphasized that the *Edwards* rule is not a constitutional mandate, but judicially prescribed prophylaxis. See, e.g., *Montejo v. Louisiana*, 556 U.S. \_\_\_, \_\_\_, 129 S. Ct. 2079, 2085, 173 L. Ed. 2d 955, 964 (2009); *Michigan v. Harvey*, 494 U.S. 344, 349, 110 S. Ct. 1176, 108 L. Ed. 2d 293 (1990); *Solem v. Stumes*, 465 U.S. 638, 644, n. 4, 104 S. Ct. 1338, 79 L. Ed. 2d 579 (1984). Because *Edwards* is "our rule, not a constitutional command," "it is our obligation to justify its expansion." *Roberson*, *supra*, at 688, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (KENNEDY, J., dissenting). Lower courts have uniformly held that a break in custody ends the *Edwards* presumption, see, e.g., *People v. Storm*, 28 Cal. 4th 1007, 1023-1024, 124 Cal. Rptr. 2d 110, 52 P.3d 52, and n. 6, 28 Cal. 4th 1007, 124 Cal. Rptr. 2d 110, 52 P. 3d 52, 61-62, and n. 6 (2002) (collecting state and federal cases), but we have previously addressed the issue only in dicta, see *McNeil*, *supra*, at 177, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (*Edwards* applies "assuming there has been no break in custody").

A judicially crafted rule is "justified only by reference to its prophylactic purpose," *Davis v. United States*, 512 U.S. 452, 458, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) (internal quotation marks omitted), and applies only where its benefits outweigh its costs, *Montejo*, *supra*, at \_\_\_, 129 S. Ct. 2079, 2089, 173 L. Ed. 2d 955, 968. We begin with the benefits. *Edwards's* presumption of involuntariness has the incidental effect of "conserv[ing] judicial resources which would otherwise be

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expended in making difficult determinations of voluntariness." *Minnick, supra, at 151, 111 S. Ct. 486, 112 L. Ed. 2d 489*. Its fundamental purpose, however, is to "[p]reserv[e] the integrity of an accused's choice to communicate with police only through counsel," *Patterson v. Illinois, 487 U.S. 285, 291, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (1988)*, by "prevent[ing] police from badgering a defendant into waiving his previously asserted *Miranda* rights," *Harvey, supra, at 350, 110 S. Ct. 1176, 108 L. Ed. 2d 293*. Thus, the benefits of the rule are measured by the number of coerced confessions it suppresses that otherwise would have been admitted. See *Montejo, supra, at \_\_\_, 129 S. Ct. 2079, 2089, 173 L. Ed. 2d 955, 968*.

It is easy to believe that a suspect may be coerced or badgered into abandoning his earlier refusal to be questioned without counsel in the paradigm *Edwards* case. That is a case in which the suspect has been arrested for a particular crime and is held in uninterrupted pretrial custody while that crime is being actively investigated. After the initial interrogation, and up to and including the second one, he remains cut off from his normal life and companions, "thrust into" and isolated in an "unfamiliar," "police-dominated atmosphere," *Miranda, 384 U.S., at 456-457, 86 S. Ct. 1602, 16 L. Ed. 2d 694*, where his captors "appear to control [his] fate," *Illinois v. Perkins, 496 U.S. 292, 297, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (1990)*. That was the situation confronted by the suspects in *Edwards, Roberson, and Minnick*, the three cases in which we have held the *Edwards* rule applicable. *Edwards* was arrested pursuant to a warrant and taken to a police station, where he was interrogated until he requested counsel. *Edwards, 451 U.S., at 478-479, 101 S. Ct. 1880, 68 L. Ed. 2d 378*. The officer ended the interrogation and took him to the county jail,<sup>2</sup> but at 9:15 the next morning, two of the officer's colleagues reinterrogated *Edwards* at the jail. *Id., at 479, 101 S. Ct. 1880, 68 L. Ed. 2d 378*. *Roberson* was arrested "at the scene of a just-completed burglary" and interrogated there until he requested a lawyer. *Roberson, 486 U.S., at 678, 108 S. Ct. 2093, 100 L. Ed. 2d 704*. A different officer interrogated him three days later while he "was still in custody pursuant to the arrest." *Ibid.* *Minnick* was arrested by local police and taken to the San Diego jail, where two FBI agents interrogated him the next morning until he requested counsel. *Minnick, 498 U.S., at 148-149, 111 S. Ct. 486, 112 L. Ed. 2d 489*. Two days later a Mississippi Deputy Sheriff reinterrogated him at the jail. *Id., at 149, 111 S. Ct. 486, 112 L. Ed. 2d 489*. None of these suspects regained a sense of control or normalcy after they were initially taken into custody for the crime under investigation.

2 [omitted]

When, unlike what happened in these three cases, a suspect has been released from his pretrial custody and has returned to his normal life for some time before the later attempted interrogation, there is little reason to think that his change of heart regarding interrogation without counsel has been coerced. He has no longer been isolated. He has likely been able to seek advice from an attorney, family members, and friends.<sup>3</sup> And he knows from his earlier experience that he need only demand counsel to bring the interrogation to a halt; and that investigative custody does not last indefinitely. In these circumstances, it is far fetched to think that a police officer's asking the suspect whether he would like to waive his *Miranda* rights will any more "wear down the accused," *Smith v. Illinois, 469 U.S. 91, 98, 105 S. Ct. 490, 83 L. Ed. 2d 488 (1984) (per curiam)*, than did the first such request at the original attempted interrogation -- which is of course not deemed coercive. His change of heart is less likely attributable to "badgering" than it is to the fact that further deliberation in familiar surroundings has caused him to believe (rightly or wrongly) that cooperating with the investigation is in his interest. Uncritical extension of *Edwards* to this situation would not significantly increase the number of genuinely coerced confessions excluded. The "justification for a conclusive presumption disappears when application of the presumption will not reach the correct result most of the time." *Coleman v. Thompson, 501 U.S. 722, 737, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991)*.

3 [omitted]

At the same time that extending the *Edwards* rule yields diminished benefits, extending the rule also increases its costs: the in-fact voluntary confessions it excludes from trial, and the voluntary confessions it deters law enforcement officers from even trying to obtain. Voluntary confessions are not merely "a proper element in law enforcement," *Miranda, supra, at 478, 86 S. Ct. 1602, 16 L. Ed. 2d 694*, they are an "unmitigated good," *McNeil, 501 U.S., at 181, 111 S. Ct. 2204, 115 L. Ed. 2d 158*, "essential to society's compelling interest in finding, convicting, and punishing those who violate the law," *ibid.* (quoting *Moran v. Burbine, 475 U.S. 412, 426, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986)*).

The only logical endpoint of *Edwards* disability is termination of *Miranda* custody and any of its lingering effects. Without that limitation -- and barring some purely arbitrary time-limit<sup>4</sup> -- every *Edwards* prohibition of custodial interrogation of a particular suspect would be eternal. The prohibition applies, of course, when the subsequent interrogation pertains to a different crime, *Roberson, supra*, when it is conducted by a different law enforcement authority, *Minnick, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489*, and even when the suspect has

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met with an attorney after the first interrogation, *ibid.* And it not only prevents questioning *ex ante*; it would render invalid *ex post*, confessions invited and obtained from suspects who (unbeknownst to the interrogators) have acquired *Edwards* immunity previously in connection with any offense in any jurisdiction.<sup>5</sup> In a country that harbors a large number of repeat offenders,<sup>6</sup> this consequence is disastrous.

[footnotes omitted]

We conclude that such an extension of *Edwards* is not justified; we have opened its "protective umbrella," *Solem*, 465 U.S., at 644, n. 4, 104 S. Ct. 1338, 79 L. Ed. 2d 579, far enough. The protections offered by *Miranda*, which we have deemed sufficient to ensure that the police respect the suspect's desire to have an attorney present the first time police interrogate him, adequately ensure that result when a suspect who initially requested counsel is reinterrogated after a break in custody that is of sufficient duration to dissipate its coercive effects.

If Shatzer's return to the general prison population qualified as a break in custody (a question we address in Part III, *infra*), there is no doubt that it lasted long enough (2 1/2 years) to meet that durational requirement. But what about a break that has lasted only one year? Or only one week? It is impractical to leave the answer to that question for clarification in future case-by-case adjudication; law enforcement officers need to know, with certainty and beforehand, when renewed interrogation is lawful. And while it is certainly unusual for this Court to set forth precise time limits governing police action, it is not unheard-of. In *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991), we specified 48 hours as the time within which the police must comply with the requirement of *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975), that a person arrested without a warrant be brought before a magistrate to establish probable cause for continued detention.

Like *McLaughlin*, this is a case in which the requisite police action (there, presentation to a magistrate; here, abstention from further interrogation) has not been prescribed by statute but has been established by opinion of this Court. We think it appropriate to specify a period of time to avoid the consequence that continuation of the *Edwards* presumption "will not reach the correct result most of the time." *Coleman*, *supra*, at 737, 111 S. Ct. 2546, 115 L. Ed. 2d 640. It seems to us that period is 14 days. That provides plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.

The 14-day limitation meets Shatzer's concern that a break-in-custody rule lends itself to police abuse. He envisions that once a suspect invokes his *Miranda* right to counsel, the police will release the suspect briefly (to end the *Edwards* presumption) and then promptly bring him back into custody for reinterrogation. But once the suspect has been out of custody long enough (14 days) to eliminate its coercive effect, there will be nothing to gain by such gamesmanship -- nothing, that is, except the entirely appropriate gain of being able to interrogate a suspect who has made a valid waiver of his *Miranda* rights.<sup>7</sup>

7 A defendant who experiences a 14-day break in custody after invoking the *Miranda* right to counsel is not left without protection. *Edwards* establishes a *presumption* that a suspect's waiver of *Miranda* rights is involuntary. See *Arizona v. Roberson*, 486 U.S. 675, 681, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (1988). Even without this "second layer of prophylaxis," *McNeil v. Wisconsin*, 501 U.S. 171, 176, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991), a defendant is still free to claim the prophylactic protection of *Miranda* -- arguing that his waiver of *Miranda* rights was in fact involuntary under *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938). See *Miranda*, 384 U.S., at 475, 86 S. Ct. 1602, 16 L. Ed. 2d 694.

Shatzer argues that ending the *Edwards* protections at a break in custody will undermine *Edwards*' purpose to conserve judicial resources. To be sure, we have said that "[t]he merit of the *Edwards* decision lies in the clarity of its command and the certainty of its application." *Minnick*, 498 U.S., at 151, 111 S. Ct. 486, 112 L. Ed. 2d 489. But clarity and certainty are not goals in themselves. They are valuable only when they reasonably further the achievement of some substantive end -- here, the exclusion of compelled confessions. Confessions obtained after a 2-week break in custody and a waiver of *Miranda* rights are [\*\*23] most unlikely to be compelled, and hence are unreasonably excluded. In any case, a break-in-custody exception will dim only marginally, if at all, the bright-line nature of *Edwards*. In every case involving *Edwards*, the courts must determine whether the suspect was in custody when he requested counsel and when he later made the statements he seeks to suppress. Now, in cases where there is an alleged break in custody, they simply have to repeat the inquiry for the time between the initial invocation and reinterrogation. In most cases that determination will be easy. And when it is determined that the defendant pleading *Edwards* has been out of custody for two weeks before the contested interrogation, the court is spared the fact-intensive inquiry into

whether he ever, anywhere, asserted his *Miranda* right to counsel.

### III

The facts of this case present an additional issue. No one questions that Shatzer was in custody for *Miranda* purposes during the interviews with Detective Blankenship in 2003 and Detective Hoover in 2006. Likewise, no one questions that Shatzer triggered the *Edwards* protections when, according to Detective Blankenship's notes of the 2003 interview, he stated that "he would not talk about this case without having an attorney present," 405 Md., at 589, 954 A. 2d, at 1120. After the 2003 interview, Shatzer was released back into the general prison population where he was serving an unrelated sentence. The issue is whether that constitutes a break in *Miranda* custody.

We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue. See *Perkins*, 496 U.S., at 299, 110 S. Ct. 2394, 110 L. Ed. 2d 243. See also *Bradley v. Ohio*, 497 U.S. 1011, 1013, 110 S. Ct. 3258, 111 L. Ed. 2d 768 (1990) (Marshall, J., dissenting from denial of certiorari). Whether it does depends upon whether it 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." *Perkins*, *supra*, at 297, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (emphasis added). To determine whether a suspect was in *Miranda* custody we have asked whether "there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *New York v. Quarles*, 467 U.S. 649, 655, 104 S. Ct. 2626, 81 L. Ed. 2d 550 (1984); see also *Stansbury v. California*, 511 U.S. 318, 322, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994) (*per curiam*). This test, no doubt, is satisfied by all forms of incarceration. Our cases make clear, however, that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody. We have declined to accord it "talismatic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated." *Berkemer v. McCarty*, 468 U.S. 420, 437, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). Thus, the temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop, see *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), does not constitute *Miranda* custody. *McCarty*, *supra*, at 439-440, 104 S. Ct. 3138, 82 L. Ed. 2d 317. See also *Perkins*, *supra*, at 296, 110 S. Ct. 2394, 110 L. Ed. 2d 243.

Here, we are addressing the interim period during which a suspect was not interrogated, but was subject to a baseline set of restraints imposed pursuant to a prior

conviction. Without minimizing the harsh realities of incarceration, we think lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*.

Interrogated suspects who have previously been convicted of crime live in prison. When they are released back into the general prison population, they return to their accustomed surroundings and daily routine -- they regain the degree of control they had over their lives prior to the interrogation. Sentenced prisoners, in contrast to the *Miranda* paradigm, are not isolated with their accusers. They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.

Their detention, moreover, is relatively disconnected from their prior unwillingness to cooperate in an investigation. The former interrogator has no power to increase the duration of incarceration, which was determined at sentencing.<sup>8</sup> And even where the possibility of parole exists, the former interrogator has no apparent power to decrease the time served. This is in stark contrast to the circumstances faced by the defendants in *Edwards*, *Roberson*, and *Minnick*, whose continued detention as suspects rested with those controlling their interrogation, and who confronted the uncertainties of what final charges they would face, whether they would be convicted, and what sentence they would receive.

8 We distinguish the duration of incarceration from the duration of what might be termed interrogative custody. When a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of *that separation* is assuredly dependent upon his interrogators. For which reason once he has asserted a refusal to speak without assistance of counsel *Edwards* prevents any efforts to get him to change his mind during that interrogative custody.

\* \* \*

Because Shatzer experienced a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation, *Edwards* does not mandate suppression of his March 2006 statements. Accordingly, we reverse the judgment of the Court of Appeals of Maryland, and remand the case for further proceedings not inconsistent with this opinion.

*It is so ordered.*

JUSTICE STEVENS, concurring in the judgment.

While I agree that the presumption from *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378

(1981), is not "eternal," *ante*, at 9-10, and does not mandate suppression of Shatzer's statement made after a 2 1/2-year break in custody, I do not agree with the Court's newly announced rule: that *Edwards* always ceases to apply when there is a 14-day break in custody, *ante*, at 11.

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The Court's analysis today is insufficiently sensitive to the concerns that motivated the *Edwards* line of cases.

1 [omitted]

I

The most troubling aspect of the Court's time-based rule is that it disregards the compulsion caused by a second (or third, or fourth) interrogation of an indigent suspect who was told that if he requests a lawyer, one will be provided for him. When police tell an indigent suspect that he has the right to an attorney, that he is not required to speak without an attorney present, and that an attorney will be provided to him at no cost before questioning, the police have made a significant promise. If they cease questioning and then reinterview the suspect 14 days later without providing him with a lawyer, the suspect is likely to feel that the police lied to him and that he really does not have any right to a lawyer.<sup>2</sup>

2 The Court states that this argument rests on a "fallacy" because "we are not talking about 'reinterrogating' the suspect; we are talking about asking his permission to be interrogated." *Ante*, at 16 (emphasis deleted). Because, however, a suspect always has the right to remain silent, this is a distinction without a difference: Any time that the police interrogate or reinterview, and read a suspect his *Miranda* rights, the suspect may decline to speak. And if this is a "fallacy," it is the same "fallacy" upon which this Court has relied in the *Edwards* line of cases that held that police may not continue to interrogate a suspect who has requested a lawyer: Police may not continue to ask such a suspect whether they may interrogate him until that suspect has a lawyer present. The Court's apparent belief that this is a "fallacy" only underscores my concern that its analysis is insufficiently sensitive to the concerns that motivated the *Edwards* line of cases.

When officers informed Shatzer of his rights during the first interrogation, they presumably informed him that if he requested an attorney, one would be appointed for him before he was asked any further questions. But if an indigent suspect requests a lawyer, "any further interrogation" (even 14 days later) "without counsel having been provided will surely exacerbate whatever compul-

sion to speak the suspect may be feeling." *Roberson*, 486 U.S., at 686, 108 S. Ct. 2093, 100 L. Ed. 2d 704. When police have not honored an earlier commitment to provide a detainee with a lawyer, the detainee likely will "understan[d] his (expressed) wishes to have been ignored" and "may well see further objection as futile and confession (true or not) as the only way to end his interrogation." *Davis v. United States*, 512 U.S. 452, 472-473, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) (Souter, J., concurring in judgment). Cf. *Cooper v. Dupnik*, 963 F.2d 1220, 1225 (CA9 1992) (en banc) (describing an elaborate police task force plan to ignore a suspect's requests for counsel, on the theory that such would induce hopelessness and thereby elicit an admission). Simply giving a "fresh se[t] of *Miranda* warnings" will not "'reassure' a suspect who has been denied the counsel he has clearly requested that his rights have remained untrammelled." *Roberson*, 486 U.S., at 686, 108 S. Ct. 2093, 100 L. Ed. 2d 704.

II

The Court never explains why its rule cannot depend on, in addition to a break in custody and passage of time, a concrete event or state of affairs, such as the police having honored their commitment to provide counsel. Instead, the Court simply decides to create a time-based rule, and in so doing, disregards much of the analysis upon which *Edwards* and subsequent decisions were based. "[T]he assertion of the right to counsel" "[i]s a significant event."<sup>3</sup> *Edwards*, 451 U.S., at 485, 101 S. Ct. 1880, 68 L. Ed. 2d 378. As the Court today acknowledges, the right to counsel, like the right to remain silent, is one that police may "coerc[e] or badge[r]," *ante*, at 7, a suspect into abandoning.<sup>4</sup> However, as discussed above, the Court ignores the effects not of badgering but of reinterviewing a suspect who took the police at their word that he need not answer questions without an attorney present. See *Roberson*, 486 U.S., at 686, 108 S. Ct. 2093, 100 L. Ed. 2d 704. The Court, moreover, ignores that when a suspect asks for counsel, until his request is answered, there are still the same "inherently compelling" pressures of custodial interrogation on which the *Miranda* line of cases is based, see 486 U.S., at 681, 108 S. Ct. 2093, 100 L. Ed. 2d 704,<sup>5</sup> and that the concern about compulsion is especially serious for a detainee who has requested a lawyer, an act that signals his "inability to cope with the pressures of custodial interrogation," *id.*, at 686, 108 S. Ct. 2093, 100 L. Ed. 2d 704.<sup>6</sup>

[footnotes omitted]

Instead of deferring to these well-settled understandings of the *Edwards* rule, the Court engages in its own speculation that a 14-day break in custody eliminates the compulsion that animated *Edwards*. But its opinion gives no strong basis for believing that this is the case.<sup>7</sup> A 14-

day break in custody does not eliminate the rationale for the initial *Edwards* rule: The detainee has been told that he may remain silent and speak only through a lawyer and that if he cannot afford an attorney, one will be provided for him. He has asked for a lawyer. He does not have one. He is in custody. And police are still questioning him. A 14-day break in custody does not change the fact that custodial interrogation is inherently compelling. It is unlikely to change the fact that a detainee "considers himself unable to deal with the pressures of custodial interrogation without legal assistance." *Roberson*, 486 U.S., at 683, 108 S. Ct. 2093, 100 L. Ed. 2d 704.<sup>8</sup> And in some instances, a 14-day break in custody may make matters worse<sup>9</sup> "[w]hen a suspect understands his (expressed) wishes to have been ignored" and thus "may well see further objection as futile and confession (true or not) as the only way to end his interrogation." *Davis*, 512 U.S., at 472-473, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (Souter, J., concurring in judgment).<sup>10</sup>

7 Today's decision, moreover, offers no reason for its 14-day time period. To be sure, it may be difficult to marshal conclusive evidence when setting an arbitrary time period. But in light of the basis for *Edwards*, we should tread carefully. Instead, the only reason for choosing a 14-day time period, the Court tells us, is that "[i]t seems to us that period is 14 days." *Ante*, at 11. That time period is "plenty of time for the suspect to get reacquainted to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody." *Ibid*. But the Court gives no reason for that speculation, which may well prove inaccurate in many circumstances.

8 [omitted]

9 The compulsion is heightened by the fact that "[t]he uncertainty of fate that being released from custody and then reapprehended entails is, in some circumstances, more coercive than continual custody." Strauss, *Reinterrogation*, 22 *Hastings Const. L. Q.* 359, 390 (1995).

10 Not only is this a likely effect of reinterrogation, but police may use this effect to their advantage. Indeed, the Court's rule creates a strange incentive to delay formal proceedings, in order to gain additional information by way of interrogation after the time limit lapses. The justification for *Fifth Amendment* rules "must be consistent with . . . practical realities," *Roberson*, 486 U.S., at 688, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (KENNEDY, J., dissenting), and the reality is that police may operate within the confines of the *Fifth Amendment* in order to extract as many confessions as possible, see *Leo & White*, *Adapting*

to *Miranda*: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by *Miranda*, 84 *Minn. L. Rev.* 397 (1999). With a time limit as short as 14 days, police who hope that they can eventually extract a confession may feel comfortable releasing a suspect for a short period of time. The resulting delay will only increase the compelling pressures on the suspect.

The Court ignores these understandings from the *Edwards* line of cases and instead speculates that if a suspect is reinterrogated and eventually talks, it must be that "further deliberation in familiar surroundings has caused him to believe (rightly or wrongly) that cooperating with the investigation is in his interest." *Ante*, at 9. But it is not apparent why that is the case. The answer, we are told, is that once a suspect has been out of *Miranda* custody for 14 days, "[h]e has likely been able to seek advice from an attorney, family members, and friends." *Ante*, at 8. This speculation, however, is overconfident and only questionably relevant. As a factual matter, we do not know whether the defendant has been able to seek advice: First of all, suspects are told that if they cannot afford a lawyer, one will be provided for them. Yet under the majority's rule, an indigent suspect who took the police at their word when he asked for a lawyer will nonetheless be assumed to have "been able to seek advice from an attorney." Second, even suspects who are not indigent cannot necessarily access legal advice (or social advice as the Court presumes) within 14 days. Third, suspects may not realize that they *need* to seek advice from an attorney. Unless police warn suspects that the interrogation will resume in 14 days, why contact a lawyer? When a suspect is let go, he may assume that the police were satisfied. In any event, it is not apparent why interim advice matters.<sup>11</sup> In *Minnick v. Mississippi*, 498 U.S. 146, 153, 111 S. Ct. 486, 112 L. Ed. 2d 489 (1990), we held that it is not sufficient that a detainee happened to speak at some point with a lawyer. See *ibid.* (noting that "consultation with an attorney" does not prevent "persistent attempts by officials to persuade [a suspect] to waive his rights" or shield against the "coercive pressures that accompany custody"). If the actual interim advice of an attorney is not sufficient, the hypothetical, interim advice of "an attorney, family members, and friends," *ante*, at 8, is not enough.

11 It is important to distinguish this from the point that I make above about indigent suspects. If the police promise to provide a lawyer and never do so, it sends a message to the suspect that the police have lied and that the rights read to him are hollow. But the mere fact that a suspect consulted a lawyer does not itself reduce the compulsion when police reinterrogate him.

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The many problems with the Court's new rule are exacerbated in the very situation in this case: a suspect who is in prison. Even if, as the Court assumes, a trip to one's home significantly changes the *Edwards* calculus, a trip to one's prison cell is not the same. A prisoner's freedom is severely limited, and his entire life remains subject to government control. Such an environment is not conducive to "shak[ing] off any residual coercive effects of his prior custody." *Ante*, at 11. <sup>12</sup> Nor can a prisoner easily "seek advice from an attorney, family members, and friends," *ante*, at 8, especially not within 14 days; prisoners are frequently subject to restrictions on communications. Nor, in most cases, can he live comfortably knowing that he cannot be badgered by police; prison is not like a normal situation in which a suspect "is in control, and need only shut his door or walk away to avoid police badgering." *Montejo v. Louisiana*, 556 U.S. \_\_\_, \_\_\_, 129 S. Ct. 2079, 2090, 173 L. Ed. 2d 955, 969 (2009). Indeed, for a person whose every move is controlled by the State, it is likely that "his sense of dependence on, and trust in, counsel as the guardian of his interests in dealing with government officials intensified." *United States v. Green*, 592 A.2d 985, 989 (D. C. 1991); cf. *Minnick*, 498 U.S., at 153, 111 S. Ct. 486, 112 L. Ed. 2d 489 (explaining that coercive pressures "may increase as custody is prolonged"). <sup>13</sup> The Court ignores these realities of prison, and instead rests its argument on the supposition that a prisoner's "detention . . . is relatively disconnected from their prior unwillingness to cooperate in an investigation." *Ante*, at 14. But that is not necessarily the case. Prisoners are uniquely vulnerable to the officials who control every aspect of their lives; prison guards may not look kindly upon a prisoner who refuses to cooperate with police. And cooperation frequently is relevant to whether the prisoner can obtain parole. See, e.g., Code of Md. Regs., tit. 12, § 08.01.18(A)(3) (2008). Moreover, even if it is true as a factual matter that a prisoner's fate is not controlled by the police who come to interrogate him, how is the prisoner supposed to know that? As the Court itself admits, compulsion is likely when a suspect's "captors appear to control [his] fate,"

*ante*, at 7 (internal quotation marks omitted). But when a guard informs a suspect that he must go speak with police, it will "appear" to the prisoner that the guard and police are not independent. "Questioning by captors, who appear to control the suspect's fate, may create mutually reinforcing pressures that the Court has assumed will weaken the suspect's will." *Illinois v. Perkins*, 496 U.S. 292, 297, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (1990) (emphasis added). <sup>14</sup>

\* \* \* \*

### III

Because, at the very least, we do not know whether Shatzer could obtain a lawyer, and thus would have felt that police had lied about providing one, I cannot join the Court's opinion. I concur in today's judgment, however, on another ground: Even if Shatzer could not consult a lawyer and the police never provided him one, the 2 1/2-year break in custody is a basis for treating the second interrogation as no more coercive than the first. Neither a break in custody nor the passage of time has an inherent, curative power. But certain things change over time. An indigent suspect who took police at their word that they would provide an attorney probably will feel that he has "been denied the counsel he has clearly requested," *Roberson*, 486 U.S., at 686, 108 S. Ct. 2093, 100 L. Ed. 2d 704, when police begin to question him, without a lawyer, only 14 days later. <sup>15</sup> But, when a suspect has been left alone for a significant period of time, he is not as likely to draw such conclusions when the police interrogate him again. <sup>16</sup> It is concededly "impossible to determine with precision" where to draw such a line. *Barker v. Wingo*, 407 U.S. 514, 521, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). In the case before us, however, the suspect was returned to the general prison population for 2 1/2 years. I am convinced that this period of time is sufficient. I therefore concur in the judgment.