Yarborough v. Alvarado: Why Is the Supreme Court Pretending That a Child Is an Adult or That a Blind Man Can See

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YARBOROUGH V. ALVARADO:¹ WHY IS THE SUPREME COURT PRETENDING THAT "A CHILD IS AN ADULT OR THAT A BLIND MAN CAN SEE?"²

I. INTRODUCTION

On June 1, 2004, a fiercely divided Supreme Court³ decided Yarborough v. Alvarado, holding that a suspect’s youth is not relevant to an “in custody” determination for Miranda⁴ purposes.⁵ Under Miranda, suspects must be given the following warnings prior to any custodial police interrogation: the right to silence, the potential use of their statements in court, the right to legal counsel prior to interrogation, and the availability of free legal counsel.⁶ If a suspect makes inculpatory statements while in custody without being given Miranda warnings, those statements are inadmissible in court.⁷ However, statements made by a suspect deemed not in custody are admissible even without Miranda warnings.⁸

The U.S. Court of Appeals for the Ninth Circuit held that precedent Supreme Court cases require that juvenile defendants be given greater procedural safeguards than adults during police interrogations.⁹ The Supreme Court rejected the Ninth Circuit’s view by refusing, in Yarborough, to consider age as a factor in determining

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² Id. at 675 (Breyer, J., dissenting) (citing to OLIVER WENDELL HOLMES, THE COMMON LAW 85–89 (M. Howe ed., 1963)).
³ The Court ruled five to four in favor of petitioner. The majority consisted of Justices Kennedy, Rehnquist, O’Connor, Scalia, and Thomas; Justices Breyer, Stevens, Souter, and Ginsburg dissented. Id. at 655.
⁵ Yarborough, 541 U.S. at 667.
⁶ Miranda, 384 U.S. at 479.
⁸ Id.
⁹ Alvarado v Hickman, 316 F.3d 841, 843 (9th Cir. 2002).
custodial status. The Ninth Circuit endorsed a "reasonable juvenile" standard by applying an age-modified objective test for custody determination under *Miranda*.

In reversing the Ninth Circuit, the Supreme Court opted for an age-less, "reasonable person" standard in order to provide clearer guidance to police in their law enforcement efforts.

By basing its decision in *Yarborough* on policy aimed at aiding law enforcement, the Supreme Court missed yet another opportunity to fulfill its professed mission to protect juvenile rights. By ruling in favor of the petitioner in *Yarborough*, the Supreme Court ignored a considerable body of its own jurisprudence, state statutes and case law that acknowledge the vulnerabilities of juveniles in the context of police interrogations and extend added procedural protections to juveniles.

Part II of this Comment discusses the facts of *Yarborough* and the procedural history leading up to the Supreme Court’s decision. Part III presents the Supreme Court’s analysis of *Yarborough*, including the reasoning behind the majority opinion and Justice O’Connor’s concurrence. Part IV provides an account of past Supreme Court decisions that recognize the special vulnerabilities of juveniles during police interrogations, and argues that the *Yarborough* Court erred by failing to give these decisions the proper authoritative weight. Part V addresses the implications of the Supreme Court’s decision in *Yarborough*. Finally, this Comment concludes that the Supreme Court decided *Yarborough* incorrectly by refusing to consider age as a factor in determining whether a juvenile is in custody for the purposes of *Miranda*.

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10. Id. at 848.
12. See Christopher P. Manfredi, *The Supreme Court and Juvenile Justice* 197 (1998) (noting that although the Supreme Court’s effort to reform American juvenile justice policy was spurred by the well-meaning aim to eliminate the “egregious abuses of discretionary justice in juvenile courts,” the Court showed a lack of foresight by failing to anticipate the criminalization of the juvenile justice system and the ensuing societal ramifications); see also Barry C. Feld, *Juveniles’ Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel*, in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 105, 128 (Thomas Grisso & Robert G. Schwartz eds., 2000) (commenting that under the direction of the Supreme Court, “the juvenile court has become a wholly owned subsidiary of the criminal justice system”).
II. FACTS AND HISTORY

A. Substantive Facts

On the night of September 22, 1995, Francisco Castaneda was murdered in the parking lot of a mall in Santa Fe Springs, California. About a month later, Los Angeles County Sheriff's Detective Cheryl Comstock contacted Michael Alvarado’s mother at her work and told her that she needed to speak with her 17-year-old son. Alvarado’s mother and father brought their son to the Sheriff’s station as requested, but police denied them permission to be present during his interrogation. At the outset of the interrogation, Detective Comstock told Alvarado that she had received “permission” from his parents to “interview” him. Throughout the two-hour interrogation, however, Alvarado never indicated that he was participating voluntarily, nor did police advise him of his Miranda rights.

At first, Alvarado denied any knowledge of or involvement in the murder. But after Detective Comstock informed him that she had witnesses who said “quite the opposite,” Alvarado began to disclose details of the murder, including the name of the shooter (Paul Soto) and his role in helping Soto hide the murder weapon. The court admitted Alvarado’s statements during the interrogation into evidence at trial. The trial court convicted him of second-degree murder and attempted robbery based primarily on his admissions made during Detective Comstock’s interrogation, and

14. Id. at 656.
15. Id.
17. Alvarado v. Hickman, 316 F.3d 841, 844 (9th Cir. 2002).
18. Yarborough, 541 U.S. at 657.
19. Id. at 657–58.
20. Id. at 658.
21. See Alvarado, 316 F.3d at 856. The only evidence used to prosecute Alvarado besides his admissions to detective Comstock was the testimony of witness Manuel Rivera, who had been drinking heavily the night of the murder, whose testimony was inconsistent during cross examination, and who was granted immunity in exchange for his testimony. Id. at 855-56. The Ninth Circuit found that Rivera was “not powerfully credible” and as such, there was
sentenced him to 15-years-to-life in California state prison. 

B. Procedural History

The California Court of Appeal affirmed Alvarado's trial court conviction. In both the trial court and on appeal, Alvarado moved to suppress his statements as the product of a custodial interrogation made without Miranda warnings. Alvarado argued that his status as a juvenile was a factor that suggested he was in custody under a Miranda analysis. However, the state court did not consider Alvarado's age as a factor when it applied the custody test articulated in Thompson v. Keohane. The Thompson custody test requires a court to first consider all the circumstances surrounding the interrogation, and then determine whether a reasonable person would have felt at liberty to leave. The state court found that Alvarado's interrogation was not custodial and, therefore, did not require Miranda warnings because "a reasonable person under the circumstances in which Alvarado was questioned would have felt free to leave."

The Ninth Circuit granted Alvarado's petition for a writ of habeas corpus and subsequently reversed the state appellate court. The Ninth Circuit held that the state court decision was an "unreasonable application of clearly established federal law," because it failed to address Alvarado's age when evaluating whether a reasonable person in his position would have felt free to leave. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and 28 U.S.C. § 2254(d)(1), a federal court can grant habeas corpus relief to a person held pursuant to a state court

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22. Yarborough, 541 U.S. at 659.
25. Id.
27. Id.
28. Alvarado, 316 F.3d at 844–45 (emphasis added).
29. Id. at 844.
30. Id. at 843.
31. Id.
judgment only if the underlying state court decision is contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. The AEDPA mandates that the standard of review in a habeas corpus proceeding be highly deferential towards the state court proceedings.

The Ninth Circuit noted that in light of the Supreme Court's long-standing recognition of a defendant's juvenile status when evaluating the voluntariness of confessions and the waiver of the privilege against self-incrimination, age must also be considered a factor as part of the clearly established federal *Miranda* custody standard. It reasoned that a minor would be more likely to feel coerced by police tactics and conclude that he or she is under arrest than would an adult, mandating additional "safeguards[] commensurate with the age and circumstances of a juvenile defendant." Accordingly, the Ninth Circuit concluded that it must consider Alvarado's age in the objective determination of custodial status, and that no "reasonable 17-year-old in Alvarado's position would have felt 'at liberty to terminate the interrogation and leave.'" The petitioner appealed, and the Supreme Court granted certiorari.

III. SUMMARY OF DECISION

A. The Reasoning of the Majority—Justices Kennedy, Rehnquist, O'Connor, Scalia, and Thomas

In determining that Alvarado was not in custody for *Miranda* purposes during his police interview, the majority first determined what the relevant clearly established federal law was. The majority surveyed the custody test articulated by the Supreme Court in prior decisions. The custody test used by the majority asked whether in

34. *Alvarado*, 316 F.3d at 844.
35. *Id.*
36. *Id.* at 850.
37. *Id.* at 851 (emphasis added) (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).
light of all the circumstances surrounding the interrogation, a reasonable person would have felt at liberty to terminate the interrogation and leave. 40 In its analysis, the majority examined the following six commonly used indicia 41 for determining whether a suspect is in custody for Miranda purposes:

(1) Whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during the questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official request to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; and (6) whether the suspect was placed under arrest at the termination of the questioning. 42

Applying these factors to the facts of the case, the majority found that certain facts weighed in favor of the view that Alvarado was in custody, while others pointed in the opposite direction. 43

According to the majority, the following facts indicated that Alvarado was in custody: the interrogation took place at a police station; the interrogation lasted two hours; Detective Comstock never

40. Yarborough, 541 U.S. at 663 (citing Thompson, 516 U.S. at 116 and Stansbury, 511 U.S. at 323).
41. STEPHEN A. SALTZBURG & DANIEL J. CAPRA, AMERICAN CRIMINAL PROCEDURE, CASES AND COMMENTARY 734 (7th ed. 2004). Because the custody test follows a case-by-case approach, no single factor is determinative of custody. Likewise, the Supreme Court has not espoused a rigid adherence to any particular factual examination as part of its custodial inquiry. Id. However, the six indicia identified by Saltzburg and Capra are almost universally addressed by courts. See, e.g., cases cited supra note 39 and Yarborough. For a comprehensive survey of state, federal and Supreme Court cases discussing the circumstances weighed in determining whether interrogations have been custodial, see J. F. Ghent, Annotation, What Constitutes “Custodial Interrogation” Within Rule of Miranda v. Arizona Requiring That Suspect Be Informed of His Federal Rights Before Custodial Interrogation, 31 A.L.R. 3D 565 (1970–2004).
42. See SALTZBURG & CAPRA, supra note 41.
informed Alvarado he was free to leave; Alvarado’s parents brought him to the Sheriff’s station rather than arriving by his own volition; and police denied his parents’ request to be present at the interrogation.44

On the other hand, the majority found that the following facts weighed against a finding that Alvarado was in custody: the police did not transport him to the Sheriff’s station or demand that he appear at a specific time; the police did not threaten him or suggest that he was under arrest; his parents remained in the lobby during the interrogation, a fact suggesting the interview would be brief; Detective Comstock appealed to Alvarado’s sense of honesty and interest in being helpful to a police officer; towards the end of the interview, Comstock twice asked Alvarado if he wanted to take a break; and at the end of the interrogation, Alvarado went home.45

Due to these “differing indications,”46 the majority concluded that “fair-minded jurists could disagree”47 over whether Alvarado was in custody and, therefore, the state court’s finding that Alvarado was not in custody did not involve an unreasonable application of the federal custody standard.48

Next, the majority examined whether it was proper to conduct the custodial inquiry without consideration of Alvarado’s age.49 The majority again reviewed the Supreme Court decisions that promulgated the *Miranda* custody test,50 and determined that those opinions did not mandate the consideration of a suspect’s age.51 The majority distinguished between the *Miranda* custody cases and other Supreme Court cases involving police interrogations that do consider a suspect’s age.52 It stated that the *Miranda* custody inquiry is and

44. *Id.* at 665.
45. *Id.* at 664.
46. *Id.* at 665.
47. *Id.* at 664.
48. *Id.*
49. *Id.* at 666.
50. See cases cited *supra* note 39.
51. *Yarborough*, 541 U.S. at 666.
52. *Id.* at 667-68 (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Lynumn v. Illinois, 372 U.S. 528 (1963)). In *Schneckloth*, the Court held that the voluntariness of a statement made under police interrogation depended on the characteristics of the accused, including age, education and intelligence. *Schneckloth*, 412 U.S. at 226. A comprehensive line of Supreme Court cases that consider a suspect’s age when examining the voluntariness of juvenile
must remain an objective test to ensure that "the police do not need 'to make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect.'" The majority contended that the Ninth Circuit's age-modified custody inquiry of what a "reasonable 17-year-old" would perceive created a subjective inquiry that ignored the purpose of an objective rule—to provide "clear guidance to the police." Thus, the majority concluded that the state court's failure to consider Alvarado's age did not provide a proper basis for the Ninth Circuit's finding that the decision was an unreasonable application of clearly established federal law.

B. O'Connor's Concurrence

Justice O'Connor wrote a separate concurrence to express an additional reason for reversal: Alvarado's proximity to the age of majority. Although she believed that "[t]here may be cases in which a suspect's age will be relevant to the Miranda 'custody' inquiry," this was not one of them because Alvarado was seventeen-and-one-half years old at the time of the interrogation. She asserted that this posed two difficulties. First, the police will have difficulties identifying a suspect as a juvenile when he is so close to eighteen. Second, the police will have an even harder time ascertaining what bearing a suspect's age has on the likelihood that he would feel free to leave. She concluded that this was especially true in cases such as Alvarado's, where many juveniles his age "can be expected to behave as adults."

IV. ANALYSIS OF DECISION

A. Historical Framework

Since the late part of the nineteenth century, American law has

confessions and Miranda waivers are discussed infra note 66.
53. Yarborough, 541 U.S. at 667 (alteration in original) (quoting Berkemer v. McCarty, 468 U.S. 420 (1984)).
54. Id. at 667–69.
55. Id. at 668.
56. Id. at 669 (O'Connor, J., concurring).
57. Id.
58. Id.
59. Id.
60. Id.
treated juveniles differently than adults. The ideology behind this disparate treatment stems from the belief that children possess special needs, characteristics, and frailties that require greater legal protections than adults. While this shielding philosophy has been generally adopted into most areas of the law, nowhere has it been advocated more fervently than in the modern juvenile justice system. Juveniles are usually afforded more safeguards than adults in criminal procedure, sanctions, and rehabilitation due to the "special vulnerabilities attendant to youth."

In a line of seminal cases, the Supreme Court recognized that these special vulnerabilities are particularly pronounced and subject to abuse in the context of police interrogations. Suspecting that such interrogations often produced coerced—and sometimes false—confessions, the Court instituted broader judicial guidelines for reviewing the admissibility of juvenile confessions made under police interrogation. Of these guidelines, the most significant was the Court's adoption of a "totality of the circumstances" approach.

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62. See id.
63. See id. at 1287–1355 (discussing the rationale behind giving adolescents (presumably 14–17) lesser decision-making capacities in the legal arenas of family law, juvenile delinquency, contract, tort, and health care).
64. See GRISSO, supra note 7, at 2 (explaining the necessity of modifying due process principles in the juvenile justice system "to take into consideration the inherent social, emotional, and psychological characteristics of juveniles").
66. See, e.g., Fare v. Michael C., 442 U.S. 707, 725 (1979) (noting that the evaluation of the voluntariness of a juvenile's Miranda waiver mandates the consideration of the defendant's age); In re Gault, 387 U.S. 1, 45 (1967) (emphasizing that "admissions and confessions of juveniles require special caution"); Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (recognizing that the immaturity and suggestibility of a child compared to the police put the juvenile on "unequal footing with his interrogators"); Haley v. Ohio, 332 U.S. 596, 601 (1948) (establishing the principle that juvenile defendants are more susceptible to coercion under police interrogation, and that due process requires consideration of defendant's juvenile status when determining the proper procedural safeguards during interrogation).
67. The Supreme Court's view that juveniles are more susceptible than adults to police coercion has been substantiated by a wealth of empirical data, discussed infra note 102.
that considered the defendant's age in determining whether a juvenile's confession and waiver of *Miranda* rights were obtained voluntarily or coerced by police. In doing so, the Court clearly intended to provide judges with greater power and discretion to protect juveniles from the inherently coercive nature of police interrogations. Furthermore, the Court also exhibited its tolerance for—indeed, its promotion of—an age-modified inquiry for juveniles when the stakes at hand are sufficiently high.

1. The Court “Pretends That a Child is an Adult”

*Yarborough* presented the Supreme Court with its first opportunity to directly address the issue of how a suspect’s youth affects an “in custody” determination for *Miranda* purposes. In concluding that age should not be considered as a factor, the Court reasoned that because none of its prior decisions applying the *Miranda* custody test have mentioned the suspect’s age, none “mandated its consideration.” Thus, the Court justified its decision by limiting the scope of its inquiry to prior *Miranda* custody cases and excluding from its calculus all other aspects of *Miranda* jurisprudence. For example, the Court excluded the line of cases discussing the voluntariness of juvenile confessions and waiver of *Miranda* rights in the face of police interrogation.

By taking such a narrow approach, the Court disregarded “the very values the *Miranda* warnings were crafted to protect”—namely the constitutional right to be free from coercive police interrogation methods. Instead of confronting the real issue at

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69. Alvarado v. Hickman, 316 F.3d 841, 843 (9th Cir. 2002).

70. See cases cited supra note 39.


73. “The purposes of the safeguards prescribed by *Miranda* are to ensure that the police do not coerce or trick captive suspects into confessing...” *Berkem v. McCarty*, 468 U.S. 420, 433 (1984). One of the fundamental
JUVENILE RIGHTS

hand—that is, to what extent can the Court incorporate age in the custodial analysis without changing it from an objective to a subjective test—the Court resorted to rationalizing its decision on a procedural point: the deferential standard of review given to habeas corpus cases. The Court simply opted for a narrow definition of clearly established federal law by focusing exclusively on *Miranda* custody cases, and accordingly validated the state court’s disregard of age as a reasonable application of those cases.

However, the voluntariness of juvenile confession and *Miranda* waiver cases prove to be highly instructive to the issues presented by *Yarborough*, and should have been accorded considerable persuasive—if not authoritative—weight as part of the federal custody standard. For instance, the voluntariness cases and *Yarborough* contain important factual similarities. All the cases involved: (1) a juvenile confession; (2) made under police interrogation; (3) in a police station; (4) without the presence of the juvenile’s parent or lawyer; (5) and resulted in trial court convictions and protracted sentences. As custodial status was not in dispute in the voluntariness cases, the Supreme Court necessarily focused its analysis on minimum due process requirements when examining the validity of the confessions and urging the consideration of the defendant’s age.

rationales behind the Fifth Amendment’s privilege against compelled self-incrimination is our legal system’s abhorrence of coerced statements due to their unreliability. See SALTZBURG & CAPRA, *supra* note 41, at 602.

74. See *Yarborough*, 541 U.S. at 663–64.

75. See id. at 658; Fare v. Michael C., 442 U.S. 707, 710 (1979); *In re Gault*, 387 U.S. 1, 6 (1967); Gallegos v. Colorado, 370 U.S. 49, 50 (1962); Haley v. Ohio, 332 U.S. 596, 598 (1948).

76. See cases cited *supra* note 75.

77. See cases cited *supra* note 75.

78. See *Yarborough*, 541 U.S. at 656; Fare, 442 U.S. at 710; *In re Gault*, 387 U.S. at 4–7; Gallegos, 370 U.S. at 50; Haley, 332 U.S. at 598.

79. See *Yarborough*, 541 U.S. at 659 (seventeen-year-old received fifteen-years-to-life as an accomplice to murder); *In re Michael C.*, 135 Cal. Rptr. 762 (1977), superseded by 579 P.2d 7 (1978), rev’d sub nom. Fare v. Michael C., 442 U.S. 707 (1979) (sixteen-year-old committed to the California Youth Authority for murder); *In re Gault*, 387 U.S. at 7–8, 29 (fifteen-year-old received 6 year sentence for making a lewd telephone call); *Gallegos*, 370 U.S. at 50 (fourteen-year-old confessed to assaulting and robbing the victim; however, the victim died three weeks after the confession and the juvenile was convicted of first degree murder); *Haley*, 332 U.S. at 597 (fifteen-year-old received life sentence for acting as lookout in murder).

80. See cases cited *supra* note 66 and accompanying text.
Thus, *Yarborough* mostly differs procedurally, not substantively, from the voluntariness cases. Accordingly, the *Yarborough* Court should have reviewed the reasoning behind the Court’s consideration of age in the voluntariness cases—the relative infirmity of juveniles during police interrogations. To paraphrase the Ninth Circuit’s observation, if a juvenile is more susceptible to police coercion during a custodial interrogation, it follows that the same juvenile is prone to believe that he is in custody in the first place.  

The Supreme Court’s only response was that “facts arguably relevant to whether an environment is coercive may have ‘nothing to do with whether respondent was in custody for the purposes of the *Miranda* rule.’” In effect, the Court declared that the special vulnerabilities of juveniles—recognized in the context of voluntariness of confession and *Miranda* waiver—are somehow suspended or magically disappear when juveniles calculate whether they are free to terminate police interrogations and leave. The dissenting justices in *Yarborough* observed that neither common sense nor the facts of the case warranted such a leap in logic, and depicted the majority’s skewed reasoning in one simple question: “why pretend that a child is an adult or that a blind man can see?”

2. The Court Places Greater Import on Law Enforcement Efforts Than Juvenile Rights

Why, then, did the Court refuse to extend the procedural safeguard of considering age as a factor it so zealously championed in the voluntariness cases to the *Miranda* custodial inquiry? One need not read between the lines of the majority opinion to find the answer, for it is in plain view: the Court’s reluctance to interfere with the daily law enforcement efforts of police. Relying on its holding in *Berkemer v. McCarty*, the Court expressed its preference of an objective custodial test that ensures “that the police do not need ‘to

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81. Alvarado v. Hickman, 316 F.3d 841, 843 (9th Cir. 2002).
82. *Yarborough*, 541 U.S. at 668 (emphasis added) (quoting Oregon v. Mathiason, 429 U.S. 429, 495–96 (1977)).
83. *Id*.
84. *Id.* at 670–73 (Breyer, J., dissenting).
85. *Id.* at 674 (Breyer, J., dissenting) (citing to HOMES, *supra* note 2, at 85–89).
86. See *id.* at 666–69.
make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect."88 The Court feared that by injecting the custodial test with age as a factor, it would unduly complicate police work by creating a subjective inquiry "that would require police to 'anticipat[e] the frailties or idiosyncrasies of every person whom they question."89

Such reasoning is faulty on two levels. First, as the dissent noted, youth is not "a special quality, but rather a widely shared characteristic that generates commonsense conclusions about behavior and perception."90 In other words, it would be far more realistic for police to assume that every minor they interrogate would feel less inclined than an adult to terminate the interrogation and leave. The police should operate accordingly when deciding whether or not to read Miranda rights to minors. As such, a "reasonable juvenile" standard would not require a purely subjective inquiry into the "state of mind" of each juvenile, but simply function as a modified objective test that takes into account a subjective characteristic shared by all minors interrogated by police.91

Second, the Court’s argument that considering a suspect’s age places additional burdens on law enforcement is without merit. A considerable number of federal, state and municipal laws routinely require police to determine the age of a person they are questioning and take particular actions if the person is a juvenile.92 Even more telling is the fact that twenty-four state jurisdictions already consider

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89. Id. (alteration in original) (citing Berkemer, 468 U.S. at 430–32).
90. Id. at 674 (Breyer, J., dissenting).
92. See Brief of the Juvenile Law Center, et al., as Amici Curiae in Support of Respondent at 23–29, Yarborough v. Alvarado, 541 U.S. 652 (2004) (No. 02-1684) [hereinafter Brief of the J.L.C.]. Some examples of such regulations include the Juvenile Justice and Delinquency Prevention Act (adhered to by forty-eight states), which mandates that officers determine an individual’s minority status when taking that individual into custody in order to prevent keeping juveniles in an adult jail for longer than six hours. 42 U.S.C. § 5601 (2005). Likewise, many states have legislated per se rules requiring police to notify an “interested adult” (legal guardian or counsel) prior to interrogating a minor. See Meyer, supra note 68, at 1054. Finally, thousands of cities enforce both nighttime and daytime curfews that require patrol officers to ascertain whether individuals they encounter on the streets are minors. See Brief of the J.L.C., supra, at 27–29.
the suspect's age when determining custodial status. In light of these bodies of law, Justice O'Connor's concern about the difficulties placed on police in ascertaining a person's age prior to interrogation rings especially hollow.

Keeping in mind the Court's explicit commitment to law enforcement efforts, it is clear that its policy on protecting juveniles during police interrogations comes with a caveat: it will extend juveniles procedural safeguards as long as doing so does not interfere with police efforts. This is precisely the reason for the Court's distinction between the *Miranda* custody test and the determination of voluntariness of confessions and *Miranda* waivers. The age-inclusive "totality of the circumstances" approach towards voluntariness functions as a retrospective judicial remedy, protecting the juvenile's due process rights only after his interaction with police. As Professor Barry C. Feld states, "[t]he 'totality' approach gives trial judges discretion to consider a youth's immaturity, but imposes minimal interference with police investigative work."94

Fearing that extending the same age-inclusive "totality" test to the *Miranda* custodial inquiry will act prospectively by inhibiting certain police behavior, the Court flinched and instinctively ruled for reversal. In doing so, however, the Court made a critical oversight. One of the main purposes of *Miranda* was to create a prophylactic rule to assist in the judicial review over police interrogation practices because of the shortcomings of the due process "totality" approach.95 To be afforded protection under due process, a suspect must show that "his will was overborne"96—a standard that is substantially harder to meet than *Miranda*’s requirement of a custodial interrogation.97 Thus, it is rare that a court will find that a suspect confessed involuntarily under the due process approach, despite evidence of unscrupulous police behavior.98 For example, courts have consistently held that certain coercive police interrogation tactics are permissible and do not violate due process, including the

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94. Feld, supra note 12, at 112.
95. See SALTZBURG & CAPRA, supra note 41, at 704 (explaining the simple prophylactic effect of *Miranda*: "If the warnings are not given, then a confession is tainted").
96. Id. at 674.
97. See id. at 690.
98. See id. at 679.
use of trickery, deception, false expressions of sympathy, and understating the significance of the crime.  

3. The Court Disregards the Prophylactic Nature of *Miranda* and the Shortcomings of the Due Process Approach

The lenience the due process analysis provides police interrogators presents defendants with grave consequences. As Seventh Circuit Judge Richard Posner noted, "very few incriminating statements, custodial or otherwise, are held to be involuntary, though few are the product of a choice that the interrogators left completely free." The inadequacy of the due process approach was corroborated by a recent study. An overwhelming majority (81%) of innocent defendants who were compelled to make false murder confessions were convicted "beyond a reasonable doubt," despite the procedural safeguard of a voluntariness inquiry. Furthermore, Judge Posner's weary view of the due process test is particularly germane in light of extensive empirical studies in the fields of criminology, psychology, and sociology that have confirmed the susceptibility of minors to suggestion and trickery during police interrogations. For example, in 2004 Professors Steven A. Drizin...
and Richard A. Leo published a study addressing 125 recent interrogation-induced false confessions to murder, including 40 by juveniles, where DNA results later proved the suspects were innocent.\footnote{103} The comprehensive study found that juveniles are over-represented in the sample pool and are more likely than adults to confess to a murder they did not commit because of their psychological inability to resist the coercive nature of police questioning.\footnote{104} Such data makes it clear that while the consideration of age in the voluntariness examination is a commendable and necessary safeguard, it offers too little, too late, to afford a juvenile sufficient protection from police coercion.

The significance of the prophylactic nature of \textit{Miranda} becomes apparent when viewed in relation to the due process approach. If the facts satisfy the requirements of a custodial interrogation and the suspect has not been given \textit{Miranda} rights, a reviewing judge has the latitude to exclude incriminating statements that would otherwise be admissible under a due process review.\footnote{105} This level of judicial discretion is particularly crucial in cases where a juvenile has made incriminating statements due to police trickery and deception. By excluding age as a factor in the \textit{Miranda} custodial test, the Court took away much of judges’ capacity to utilize \textit{Miranda} as a prophylactic tool to overturn coerced juvenile confessions deemed “permissible” under a due process analysis.

Furthermore, the \textit{Yarborough} holding provides police with a backdoor method to circumvent \textit{Miranda}’s application to minors. If,

\footnote{103. See Drizin & Leo, supra note 101, at 932–44.} \footnote{104. See id. at 944.} \footnote{105. Research shows that the increased judicial discretion provided by \textit{Miranda} has not lead to a significant rise in the number of excluded confessions. For example, a study found that \textit{Miranda} was “raised in 9% of appeals, but only 5.6% of those claims were successful, resulting in a reversal rate of .51% of all criminal appeals.” Saltzburg & Capra, supra note 41, at 705 (citing Karen I. Guy & Robert G. Huckabee, Going Free on a Technicality: Another Look at the Effect of the Miranda Decision on the Criminal Justice Process, 4 CRIM. J. RES. BULL. 1 (1988)). Such findings suggest two implications. First, they lay to rest the oft-raised criticism that under \textit{Miranda}’s exclusionary rule “the criminal is to go free because the constable has blundered.” Id. at 501. Second, they may lend credence to the view that \textit{Miranda} protections should be further extended, not retracted. Id. at 708 (citing Charles J. Ogletree, Are Confessions Really Good for the Soul? A Proposal to Mirandize Miranda, 100 HARV. L. REV. 1826 (1987)).}
as the Court suggested, the facts relevant to finding a coercive environment has nothing to do with a juvenile’s custody determination, then the police would be capable of eliciting a coerced confession from a juvenile out of custody. A police officer would be able to tell juveniles they are free to leave regardless of whether they felt that way, not read the Miranda warnings, and then use subtle psychological ploys to obtain incriminating statements from the juveniles. The effect of the Court’s ruling is that in such situations, a judge will be unable to incorporate the minor’s age to find that the juvenile did not in fact feel free to leave and should have been given Miranda warnings. The judge will instead have to review the elicited confession under the far more stringent due process test.

This scenario is not far fetched. It is essentially what took place during Detective Comstock’s interrogation of Michael Alvarado. The majority relied on the facts that “Comstock focused on Soto’s crimes rather than Alvarado’s,” and that instead of threatening Alvarado with arrest and prosecution, she “appealed to his interest in telling the truth and being helpful to a police officer” to find that he was not in custody. Police, however, use these two archetypical ploys, permitted by the due process test, to coerce a juvenile to confess. The ploys understate the significance of the suspect’s crime and appeal to the suspect’s emotional disposition. Thus, despite the Court’s assertion otherwise, the facts giving rise to a coercive environment are often the same facts informing the custodial determination. The Court’s failure to see the nexus between the two in-

107. Id. at 656–58.
108. Id. at 664.
109. Id.
110. See Saltzburg & Capra, supra note 41, at 679–80. Another detail demonstrating that detective Comstock understated the significance of Alvarado’s crime was her telling him that she was only going to “interview” him, when in fact their exchange encompassed all the attributes of the legal definition of an interrogation. See id. at 737–41 (describing an interrogation, under the Supreme Court cases of Rhode Island v. Innis, 446 U.S. 291 (1980) and Edwards v. Arizona, 451 U.S. 477 (1981), as “express questioning” and “any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect,” including confronting the suspect with incriminating evidence). That the petitioner never disputed whether Alvarado was “interrogated” as required for a finding of a “custodial interrogation” signifies that the issue was moot.
quiries exhibits its choice to "turn a blind eye to the abuse of a minor's vulnerabilities by interrogating officers."\textsuperscript{111}

Perhaps the most telling fact in the case—and one that the Supreme Court ignored—was that Michael Alvarado asked "whether someone should be here with [him],"\textsuperscript{112} and he received no response.\textsuperscript{113} Although the question cannot be deemed an unequivocal request for an attorney, it surely suggests that had Detective Comstock read Alvarado his \textit{Miranda} rights, he would have invoked his constitutional right to counsel. While Alvarado may have still ended up confessing to his role in the murder, an attorney would, at the very least, have helped him understand the consequences of doing so. Yet, under the Court's ruling, Detective Comstock's circuitous route around \textit{Miranda} and her methodical extraction of inculpatory statements from a juvenile stands to become the rubric for model police behavior.

\textbf{V. IMPLICATIONS}

The implications of the Supreme Court's holding in \textit{Yarborough} are troubling. First, despite Justice O'Connor's intimation that "[t]here may be cases in which a suspect's age will be relevant to the \textit{Miranda} 'custody' inquiry,"\textsuperscript{114} the decision does not provide judges with the guidance or power to make that determination. Accordingly, all juveniles below the age of eighteen, regardless of their variation in age (0–18) will be treated equally in the eyes of the law in all future \textit{Miranda} custody inquiries.\textsuperscript{115} Thus, the question will remain whether the juvenile felt free to terminate the interrogation and leave, regardless of whether the juvenile is seven or seventeen years old. The inherent injustice in such a rule is beyond dispute.

Likewise, the Court's ruling will have the effect of transforming the "reasonable person" standard originally envisioned in the \textit{Miranda} custody test into the equivalent of a "reasonable adult" standard.\textsuperscript{116} Such an outcome indicates the Court's equivocal

\textsuperscript{111} Brief of the N.A.C.D.L., \textit{supra} note 16, at 27.
\textsuperscript{112} \textit{Id.} at 2 (internal quotations and alterations omitted).
\textsuperscript{113} \textit{Id.}
\textsuperscript{114} \textit{Yarborough}, 541 U.S. at 669 (O'Connor, J., concurring).
\textsuperscript{115} See Brief of the J.L.C., \textit{supra} note 92, at 2.
commitment toward juveniles, treating them like adult criminal defendants when formal equality works to their disadvantage,\(^1\) while advocating juvenile procedural safeguards when doing so presents an advantage to law enforcement efforts.\(^2\) Such "selective recognition"\(^3\) of juvenile procedural rights is not only unjust, it also poses increased dangers for juveniles due to the rapid rise in the number of juveniles being tried as adults.\(^4\) Thus, juveniles involved in today’s justice system are up against two ominous statistics: first, they are more likely than adults to make false confessions;\(^5\) second, they are increasingly likely to be tried as adults once they confess.\(^6\) Because "juveniles have increasingly more liberty to lose when they are arrested and interrogated,"\(^7\) it seems clear that they require more, not less, procedural protections. Reducing the protections afforded juveniles during police interrogation ensures that those statistics will, at best, remain the same. A more likely scenario, however, is that they will continue to rise.

Finally, the rationale propounded in *Yarborough* calls into question the very integrity of the Supreme Court. As renowned criminal procedure Professor Stephen A. Saltzburg recently observed, the Supreme Court threatens the integrity of the judicial system when it hands down decisions calculated to promote police efficiency rather than to protect the constitutional rights of citizens:

> [T]here is the tendency of the Supreme Court to pretend that the world we all know is not the world in which law enforcement operates. To be blunt, I contend that the

\(^{117}\) See Feld, *supra* note 12, at 105.

\(^{118}\) The procedures used by detective Comstock are illustrative of such treatment. The detective secured Michael Alvarado’s presence at the Sheriff’s station by contacting his parents and telling them to bring him there, yet refused their request to be present during the interrogation. See *Yarborough*, 541 U.S. at 656.


\(^{120}\) See Lisa M. Krzewinski, Note, *But I Didn’t Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L.J. 355, 365 (2002) (noting a recent report’s finding that “about 200,000 children a year are prosecuted in general criminal courts; more than 11,000 children are in prisons and other long-term adult correctional facilities; and, more than 2000 children are housed in the general population of adult prisons”).

\(^{121}\) See Drizin & Leo, *supra* note 101, at 944.

\(^{122}\) See Krzewinski, *supra* note 120, at 365.

\(^{123}\) Id.
Supreme Court has offered opinions that strain to describe human nature and typical behavior and rely upon beliefs and reactions of ordinary people to fit the world that law enforcement wishes the Court to believe is real. Whether the Court is out of touch with the world in which most people live or is blinking and winking to aid law enforcement probably does not matter. Decisions that do not correspond to the world in which most people live threaten to undermine the integrity of the judicial system.  

By holding that a juvenile’s special vulnerabilities are relevant to a voluntariness inquiry, but not to a custodial inquiry, the Yarborough Court clearly offered a decision that “strain[s] to describe human nature and typical behavior” in its effort to aid law enforcement. Perhaps because it attempted to disguise its allegiance to law enforcement concerns beneath a sea of formalistic tests, the Court overlooked an absurd product of its holding. Although both the voluntariness and custodial analyses employ a “totality of the circumstances” test, the voluntariness inquiry considers the suspect’s age while the custodial inquiry does not. Yet both of the inquiries examine the same factual event—the police interrogation of a juvenile. The irony here cannot be missed: the “totality of the circumstances” of a single event—the interrogation—comprises completely unequal accounts depending on whether the inquiry examines voluntariness or custodial status. This logical conflict is not simply a semantic oversight made by the Supreme Court, but rather is indicative of the Court’s blatant disregard of the parallel concerns informing both inquiries.

125. Id.
126. Compare Yarborough v. Alvarado, 541 U.S. 652, 661 (2004) (referring to the custodial inquiry as examining the “totality of the circumstances” of the interrogation to determine whether the suspect felt free to leave), with Gallegos v Colorado, 370 U.S. 49, 55 (1962) (considering the “totality of the circumstances” of the interrogation to determine the voluntariness of confession), and Fare v. Michael C., 442 U.S. 707, 725 (1979) (looking to the “totality of the circumstances” surrounding the interrogation to see if a Miranda waiver was attained voluntarily).
VI. CONCLUSION

The Supreme Court erred in deciding *Yarborough* in favor of the petitioner. By refusing to consider Michael Alvarado's age as a factor in determining whether he was in custody for the purposes of *Miranda*, the Court ignored an important line of its prior *Miranda* decisions. The common concerns underlying the determination of voluntariness of a juvenile's confession and waiver of *Miranda* rights and the determination of a juvenile's custodial status are unmistakable: protecting the juvenile from undue police influence during interrogation.

The Court rationalized its distinction between the two lines of cases by examining the *Miranda* custody test through an excessively narrow lens. Although the Court masked its decision behind Alvarado's failure to meet the proper standard of review required of a habeas corpus proceeding, the Justices' partiality towards law enforcement efforts over juvenile rights can be easily discerned by the opinion. Had the Court chosen to give its prior *Miranda* decisions that espouse juvenile rights the appropriate authoritative weight, the Court would have been compelled to conclude that Michael Alvarado was indeed "in custody", and as such, the police violated his Fifth Amendment privilege against self-incrimination.

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