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Resolving Custodial in Custodial Interrogation Pertaining to Miranda Warnings: The Balance between Individual Rights and Police Effectiveness

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RESOLVING “CUSTODIAL” IN CUSTODIAL INTERROGATION PERTAINING TO MIRANDA WARNINGS: THE BALANCE BETWEEN INDIVIDUAL RIGHTS AND POLICE EFFECTIVENESS

The D.C. Circuit has thus far declined to reach the question of whether a defendant is in “custody” for the purposes of Miranda when she is handcuffed during the execution of a search warrant. Other Circuits are split on whether handcuffing during the course of a search generally renders a defendant in “custody” for the purposes of Miranda.¹

I. INTRODUCTION

The heart of the Bill of Rights contains some of the most crucial and important rights granted to American citizens.² Specifically, the Fifth and Sixth Amendments, the right to remain silent and the right to counsel, are widely recognized but sometimes misunderstood.³ Ordinary American citizens are familiar with Miranda warnings from fictitious television programs; however it has become increasingly difficult to determine when these warnings are mandatory or when they require invocation.⁴ The circuits unanimously require Miranda warnings prior to “custodial interrogations” because there is a formal arrest; however they are split when defining “custodial” in other situations of police detainment.⁵ One of

² See U.S. CONST. amend. V (providing protection against self-incrimination); U.S. CONST. amend. VI (providing right to counsel); Twining v. New Jersey, 211 U.S. 78, 91, 121-22 (1908) (“[T]he principle that no person could be compelled to be a witness against himself [is] embodied in the common law and distinguished it from all other systems of jurisprudence. It was generally regarded then, as now, as a privilege of great value, a protection to the innocent though a shelter to the guilty, and a safeguard against heedless, unfounded or tyrannical prosecutions.”).
⁴ See Ronald Steiner, et al., The Rise and Fall of the Miranda Warnings in Popular Culture, 59 CLEV. ST. L. REV. 219, 221 (2011) (arguing citizens knowledge of warnings are misconstrued from media).
⁵ See e.g., Richardson, 36 F. Supp. 3d at 129 n.9 (identifying D.C. Circuit failing to answer
the many legal tests requires an objective analysis of the suspect, yet these
tests frequently result in inconsistent outcomes throughout different
jurisdictions.  

Throughout the early construction of American law, the founding
fathers consistently fought to include the right to counsel and the protection
against self-incrimination because they sought to avoid coercion and forced
admissions of guilt which was prevalent within English common law.  
Throughout time, these rights were molded and contoured to adapt to
modern times and contemporary jurisprudence.  

Pre-Miranda court decisions either approved of (expressly or constructively) or looked the
other way from police misconduct and coercion, but that slowly changed
over time.  

Miranda v. Arizona brought these issues to the forefront in
the mid-twentieth century and forced police to adopt new procedural
requirements informing individuals of their rights during custodial
interrogations.  

Currently, the law is in a state of confusion pertaining to
the meaning of “custodial.”  

There is no doubt when an individual is
placed under formal arrest, either pursuant to probable cause or an arrest

whether handcuffs during search require Miranda warnings); see also United States v. Brinson-
Scott, 714 F.3d 616, 621 (D.C. Cir. 2013) (finding lawful arrest but passing on constitutional
question of custody under Miranda); United States v. Harris, 515 F.3d 1307, 1311 (D.C. Cir.
2008) (finding violation of Fifth Amendment was “harmless” and refusing to analyze custody
issue); United States v. Gaston, 357 F.3d 77, 87-88 (D.C. Cir. 2004) (avoiding custody question
by implementing “administrative exception” under Miranda); United States v. Bautista, 684 F.2d
1286, 1290 (9th Cir. 1982) (holding defendant placed in handcuffs during detention was not in
custody within meaning of Miranda). But see United States v. Leshuk, 65 F.3d 1105, 1109-10
(4th Cir. 1995) (finding handcuffs are important factor to consider but not dispositive within
custody analysis); United States v. Cowan, 674 F.3d 947, 957-58 (8th Cir. 2012) (concluding
suspect did not objectively feel free to terminate encounter and questioning); United States v.
Newton, 369 F.3d 659, 676 (2d Cir. 2004) (“[A] reasonable person finding himself placed in
handcuffs by the police would ordinarily conclude . . . that he was restrained to a degree normally
associated with formal arrest and, therefore, in custody.”).  

See Newton, 369 F.3d at 672, 676 (identifying “objective” test for custody whether
individual “feels free to end the encounter” with police); see also Brinson-Scott, 714 F.3d at 621
(holding use of handcuffs is important factor, but not dispositive).

See RICHARD L. GREAVES, SOCIETY AND RELIGION IN ELIZABETHAN ENGLAND, 649, 681

8 See infra Section II, Parts B & C (describing changes that occurred throughout 19th and
20th century).

9 See Brown v. Mississippi, 297 U.S. 278, 283 (1936) (holding police violence when
obtaining confession violation of due process); Chambers v. Florida, 309 U.S. 227, 240-42 (1940)
(finding police coercion when suspect confessed after confinement and constant police
questioning); Ashcraft v. Tennessee, 322 U.S. 143, 156 (1944) (reversing murder convictions
based on confessions when confessions were result of violence and fear).


11 See id. 471-72 (creating judicial safeguard and recognizing importance of these rights).

12 See Richardson, 36 F. Supp. 3d at 129 n.9 (identifying circuit split regarding definition of
“custodial” under Miranda).
warrant, the “custodial” requirement is satisfied; however it is unclear whether an individual placed in handcuffs during the execution of a search warrant for officer safety is within the scope of custodial.\textsuperscript{13} There is a need for clarity within this area because of the importance of the rights at stake; however there is a compelling argument for police officers to efficiently perform their job duties without a complicated legal analysis.\textsuperscript{14}

This note will explore the confusing and inconsistent nature of the law as it pertains to “custody” and how the courts attempt to define custody within the requirements of \textit{Miranda}.\textsuperscript{15} Beginning with a brief overview and history of the rationale behind the right to remain silent and the right to counsel, this note will then discuss the historical development of \textit{Miranda} and the current state of the law.\textsuperscript{16} Then, current factual circumstances will be presented that display how real life encounters are decided under the current state of the law.\textsuperscript{17} This note will then outline factors litigants are required to show the court to determine whether an individual was in custody to require \textit{Miranda} warnings.\textsuperscript{18} Additionally, an analysis of the current obstacles a litigant may face when defending an individual who may have been in custody or a prosecutor arguing \textit{Miranda} warnings are not required.\textsuperscript{19} Finally, the varying tests will be compared to help guide the litigant through the current state of the law and where it is likely going.\textsuperscript{20}

Other issues have been resolved within this area, like “interrogation” which has been clearly defined for decades.\textsuperscript{21} It is evident “custody” under \textit{Miranda} needs to be clarified for litigants and police officers alike.\textsuperscript{22} This note will conclude with a prediction of the future of the anticipated development of “custody” as it is related to \textit{Miranda} and advise litigants how to frame an argument to best serve the represented party.\textsuperscript{23}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{13} \textit{Id.}
  \item \textsuperscript{14} See \textit{id.} (identifying complicated legal tests among circuits when determining custody).
  \item \textsuperscript{15} See \textit{infra} Sections II, III.
  \item \textsuperscript{16} See \textit{infra} Section II.
  \item \textsuperscript{17} See \textit{infra} Section III.
  \item \textsuperscript{18} See \textit{infra} Section IV.
  \item \textsuperscript{19} See \textit{infra} Section IV.
  \item \textsuperscript{20} See \textit{infra} Section IV.
  \item \textsuperscript{21} See Berkemer v. McCarty, 468 U.S. 420, 428-29 (1984) (analyzing interrogation within \textit{Miranda} context). The court defined “interrogation” for purposes of \textit{Miranda} as any police questioning, “initiated by law enforcement officers” after a suspect is placed under formal arrest or “otherwise deprived of his freedom of action in any significant way.” \textit{Id.}
  \item \textsuperscript{22} See \textit{infra} Section V.
  \item \textsuperscript{23} See \textit{infra} Section V.
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II. HISTORY OF THE RIGHT TO COUNSEL AND SELF INCROCIMATION

The current state of the law has evolved through hundreds of years of judicial interpretation and statutory implementation. Opportunities throughout history were presented to establish and protect these rights; however, it has not been a swift process. In 1897, in Bram v. United States, the Court discussed the history and case law beginning in early British and American history and laid down a rule that was not practically enforced until the 20th century; a rule that identified the requisite mental state required to voluntarily make an admission. The law had the intent to preserve voluntariness of a confession, but the adoption of that rule did not come to fruition until recently.

A. Early construction of the right to counsel and against self-incrimination

The right to self-incrimination and the right to counsel were indispensable to the founding fathers because of their experiences in England involving police temptation to coerce individuals into false confessions by torture. These experiences were based on 16th century England when an individual was considered guilty unless they swore their innocence and any admission, despite the level of coercion, was


25 See Bram v. United States, 168 U.S. 532, 542 (1897) (describing Fifth Amendment as binding). The Court identified the Fifth Amendment as the controlling body of law when dealing with criminal trials and issues of police coercion and self-incrimination, but failing to apply the rules practically. Id.; see Miranda, 384 U.S. at 461 (identifying issue as one which would have been “settled in federal courts almost 70 years ago”).

26 See id. at 549 (requiring “legal sufficiency” of suspect’s admission considered voluntary if not product of coercion).

27 See Ziang Sung Wan v. United States, 266 U.S. 1, 14-17 (1924) (explaining fundamentals of voluntary confession). The court excluded the defendant’s statements because they were the result of a seven day interrogation and held “confession[s] obtained by compulsion must be excluded whatever may have been the character of the compulsion,” regardless of the situation. Id. at 14-15.

This tradition continued in early American history despite the Privileges and Immunities Clause of the Fourteenth Amendment. Initially, the Bill of Rights was only mandated by the federal government and did not include the individual State sovereignty. However, this changed after the Civil War and the ratification of the Reconstruction Amendments.

B. Reconstruction Amendments

The post-Civil War amendments sought to unify the country. Through judicial interpretation, the courts construed the Due Process Clause of the Fourteenth Amendment to incorporate some of the provisions within the Bill of Rights and impose these provisions on the States. The Privileges and Immunities Clause of the Fourteenth Amendment did not seek to confer new rights on American citizens but apply existing rights equally.

However, the “right” to self-incrimination was not automatically guaranteed because it was considered part of the privileges and immunities pursuant to the Fourteenth Amendment. In fact, the period after the Twining v. New Jersey decision was known as “selective incorporation” of provisions of the Bill of Rights. This was the law for the next half century until it was ultimately overruled by the Malloy court. After the Malloy decision, an equal application of the right against self-incrimination

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31 See U.S. CONST. amend. XIV (providing courts with basis to impose rights contained within Bill of Rights onto States).
34 Id.
35 Id. at 870.
37 See Twining v. New Jersey, 211 U.S. 78, 99 (1908) (holding Fourteenth Amendment does not guarantee “privilege” against self-incrimination and can be curtailed).
38 211 U.S. 78 (1908).
39 Id. (noting denial of certain Constitutional rights may deprive individual of due process).
40 See Malloy v. Hogan, 378 U.S. 1, 3 (1964) (holding Fourteenth Amendment prohibits States from intruding on federally protected rights, including self-incrimination).
was to be applied nationwide. After equal application of these important Constitutional rights, before Federal and State became the law, complications arose involving the execution of these new mandatory rights; further analysis of the intricacies of those standards continued and led to Miranda.

C. 20th Century Interpretation and Miranda

During the early 20th century there was a legal aid movement (a social movement recognizing equal access to legal aid was severely lacking) that ultimately led to a broader interpretation of certain rights in criminal matters. The seminal cases during this “due process” revolution include Gideon v. Wainwright, Mapp v. Ohio, Terry v. Ohio, and Escobedo v. Illinois. A shift in the judicial interpretation of the Fifth Amendment resulted in certain statements inadmissible when they were the result of police interrogation without prior reading of the suspect’s rights. This particular movement was articulated in Miranda v. Arizona combining multiple cases and created a landmark decision that remains highly influential in this area of the law to this day.

Ernesto Miranda was arrested on March 13, 1963 at his home and taken to a Phoenix police station. The police did not advise Miranda that he had a right to an attorney and interrogated him for two hours. Ultimately, the police obtained a signed confession to the rape. The police never informed Miranda of his right to silence nor his right to counsel. In essence, the coercion resulted in a confession and denied

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41 See id. at 12-14 (applying federal standard of right against self-incrimination in state court cases).
42 See Miranda, 384 U.S. at 478-79 (determining Fifth Amendment requires police read suspect their rights before questioning).
46 392 U.S. 1 (1968).
48 See Miranda, 384 U.S. at 478-79 (imposing judicial safeguard of pre-interrogation warnings).
49 Id. at 491-99 (combining multiple cases due to “recurrent significance”).
50 Id. at 491.
51 Id. at 440, 491-92.
52 Id. at 492.
53 See Miranda, 384 U.S. at 491-92 (holding suspect “not in any way apprised of his rights to consult with an attorney”).
Miranda the right to remain silent; the confession also rendered his right to
counsel at trial ineffective because an admission is so damning. The
Court ultimately reversed the conviction based on the signed confession.

The other petitioners in the matter, Michael Vignera and Carl Calvin Westover, were in similar situations as Miranda and the Court reversed. The Court also heard from petitioner, Roy Allen Stewart, and affirmed the reversal of his convictions based on a similar theory. The Miranda court imposed a judicial safeguard that requires police read the suspect his rights prior to questioning. Additionally, if there is no evidence that suggests the police provided the suspect with information regarding his rights, it is presumed the defendant was not given the opportunity to “intelligently” waive these essential rights.

The Court determined an individual must waive these rights after fully understanding them after the police informed them of those rights. The Court believed it was important for a defendant who waives his rights to do so “voluntarily, knowingly, and intelligently” after notice of rights has been given. This important decision requires that an individual held by police must be read their rights prior to any interrogation.

There have been many developments in the law over the course of fifty years that have undermined Miranda. Specifically, Miranda was criticized for being too broad and exceeding the protections provided by the

54 See id at 492 (examining how suspect’s rights are affected by police coercion).
55 Id. at 492-93 (reversing based on suspect’s lack of knowledge of rights and coercive police methods).
56 See id. at 494-97 (identifying other suspects were not warned of their rights before questioning).
57 See id. at 497-99 (holding Stewart was coerced based on nine interrogations over course of five days).
58 Miranda, 384 U.S. at 498-99.
59 See id. (discussing presumption within context of custodial interrogation).
60 See id. at 479 (“After [Miranda warnings are given] . . . the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.”) (emphasis added).
61 See id. at 444 (requiring heightened mental state of suspect to waive these rights).
62 See id. at 471 ("Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation.").
63 Compare Miranda, 384 U.S. at 471 (excluding suspect’s statements made prior to warnings), with Stansbury v. California, 511 U.S. 318, 325 (1994) (holding subjective views of suspect regarding “custody” does not factor in ultimate objective determination), and United States v. Rivas-Lopez, 988 F. Supp. 1424, 1432 (D. Utah 1997) (identifying Miranda as Constitutional “safeguard” and be issued as precaution rather than substantive Constitutional right).
Fifth Amendment. Additionally, silence after issued *Miranda* warnings was used to impeach the suspect. *Miranda* was frequently questioned to determine whether the Constitution requires warnings or whether warnings are simply judicial safeguards.

*Miranda* warnings are only required when a suspect is being interrogated while in custody, however defining this has been difficult for courts after the *Miranda* decision. The objective test courts utilized when determining custody has created practical issues due to confusing legal tests and inconsistent results. Authority in other areas of criminal procedure and constitutional rights has shifted toward “bright line” rules; however, an objective test remains regarding custody for *Miranda* purposes.

The current law objective test usually analyzes whether the suspect has been placed under formal arrest or if the suspect is constructively under arrest, generally meaning the individual would feel free to terminate the encounter. A totality of the circumstances approach is generally taken and some factors that are considered are: (1) where the interrogation took place; (2) whether objective evidence of an arrest is present; and (3) the length and substance of the police’s questions. The tests are clear when an individual is placed under formal arrest pursuant to probable cause; however, there are many instances where an individual would not feel free

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69 See United States v. Leshuk, 65 F.3d 1105, 1109-10 (4th Cir. 1995) (identifying Terry stops do not sufficiently rise to level of formal arrest). But see United States v. Newton, 369 F.3d 659, 676 (2d Cir. 2004) (finding suspect who is not free to end encounter is under custody for *Miranda* purposes).

70 See Beheler, 463 U.S. at 1125 (identifying factors that must be considered when making objective determination of custody).

71 See People v. Boyer, 768 P.2d 610, 622-23 (Cal. 1989) (introducing and analyzing factors to determine custody but holding no one factor dispositive).
to terminate the encounter.\textsuperscript{72} Yet, the courts hold they are not in custody for \textit{Miranda} purposes; these situations give rise to the current controversy within the current formulation of the law.\textsuperscript{73}

III. FACTS

The United States Supreme Court determined the analysis to determine custody for \textit{Miranda} purposes "is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."\textsuperscript{74} Over the years, the Court has determined that \textit{Miranda} warnings are not required during a traffic stop.\textsuperscript{75} Anything in between however is up for debate, specifically when an individual is placed in handcuffs during the execution of a search warrant or for officer safety.\textsuperscript{76} Under the current law, similar factual situations can have very different outcomes jurisdiction by jurisdiction.\textsuperscript{77}

Some circuits have determined that the custody requirement for \textit{Miranda} has been satisfied when a defendant is placed in handcuffs and detained during the execution of a search warrant.\textsuperscript{78} \textit{United States v. Cowan}\textsuperscript{79} in particular focuses primarily on the suspect's objective belief whether they could end the encounter rather than the requirement the restraint gives rise to formal arrest.\textsuperscript{80} Other circuits reject this outright, claiming that this does not rise to the requisite level of a "formal arrest."\textsuperscript{81}

\textsuperscript{72} See Richardson, 36 F. Supp. 3d at 129 n.9 (describing confusing nature and vagueness of custody law pertaining to \textit{Miranda}).

\textsuperscript{73} Id.


\textsuperscript{76} See cases cited supra note 4 (discussing \textit{Miranda} and custodial interrogations).

\textsuperscript{77} Compare Richardson, 36 F. Supp. 3d at 120, 129 n.9 (declining to answer whether handcuffs sufficiently place suspect in custody for \textit{Miranda}), with United States v. Leshuk, 65 F.3d 1105 (4th Cir. 1995) (finding "handcuffs do not necessarily rise to level of custody for \textit{Miranda}" purposes), and United States v. Newton, 369 F.3d 659, 675 (2d Cir. 2004) ("[A] reasonable person finding himself placed in handcuffs by the police would ordinarily conclude . . . that he was restrained to a degree normally associated with formal arrest and, therefore, in custody.").

\textsuperscript{78} See United States v. Cowan, 674 F.3d 947, 957 (8th Cir. 2012) (holding suspect was in custody for \textit{Miranda} purposes "because a reasonable person in [the defendant's] position would not have felt free to end the questioning and leave.").

\textsuperscript{79} 674 F.3d 947(8th Cir. 2012).

\textsuperscript{80} See id. at 957-58 (holding defendant was in custody when "detained, handcuffed, and patted down while [police] questioned him"); cf. \textit{Beheler}, 463 U.S. at 1124 (identifying situations where suspect's restraint is constructively formal arrest).

\textsuperscript{81} See United States v. Leshuk, 65 F.3d 1105, 1109-10 (4th Cir. 1995) (concluding a number
The Circuits unanimously hold that the use of handcuffs are a substantial factor, but is not dispositive when determining custody.\(^{82}\)

**A. D.C. Circuit**

The D.C. Circuit has declined to elaborate on whether a handcuffed detainee is within the definition of “custody” necessary to invoke warnings.\(^{83}\) In *United States v. Richardson*\(^{84}\) court identified a number of cases that have failed to answer this question.\(^{85}\) The D.C. Circuit also relies on Congress' identification that harmless error of police work should be disregarded when deciding these Constitutional issues.\(^{86}\) The *Brinson-Scott* Court identified that the main issue in dispute was whether the handcuffs and lawful detention constituted custody for Miranda.\(^{87}\)

*Brinson-Scott*’s brother, Jonathan Cayol, was arrested for a number of charges, and the police obtained a search warrant for Cayol’s apartment.\(^{88}\) At the time of the search, Brinson-Scott was the only occupant of the apartment.\(^{89}\) The police placed Brinson-Scott in handcuffs and placed him in a chair in the living room.\(^{90}\) Police officers asked Brinson-Scott a number of questions while handcuffed, specifically which room belonged to Brinson-Scott, and he responded verbally and with a head nod.\(^{91}\) When police entered the left room they discovered cocaine,
cash, a protective facemask, and some of Brinson-Scott’s personal items.\(^92\) After the police discovered these items, Brinson-Scott was approached and told police, “[they] don’t know what it’s like to grow up in this neighborhood. What else are we supposed to do?”\(^93\) This statement was introduced and identified by the court as his “confession.”\(^94\)

Brinson-Scott was indicted for a number of charges and moved to suppress all physical evidence seized from the apartment.\(^95\) The court denied these motions and Brinson-Scott was subsequently convicted on one of the counts in the indictment.\(^96\) Brinson-Scott then brought an appeal and the court affirmed the lower court’s decision.\(^97\) The court first identified the police’s detention of the defendant was lawful under the Fourth Amendment and that his “nod” was considered harmless error beyond a reasonable doubt.\(^98\) This court identified the complexities associated with the detention of Brinson-Scott and whether it was “within the meaning of Miranda” but took an alternate route provided by the substantial evidence and avoided “this constitutional thicket.”\(^99\)

Similarly, the Harris court dealt with the issue in a similar way.\(^100\) The defendant claimed the use of handcuffs and immediate questioning by police officers violated her Fifth Amendment rights provided by Miranda.\(^101\) Officers executed a search warrant on Harris’s apartment, and when they entered the apartment they handcuffed Harris and two others inside.\(^102\) Without providing Miranda warnings, the officers asked Harris if there was anything in the apartment they should know about.\(^103\) Harris

\(^92\) See Brinson-Scott, 714 F.3d at 619 (discussing police discovery of money and drugs).
\(^93\) Id.
\(^94\) See id. (denying suppression of physical evidence, statements, head nod and confession).
\(^95\) See id. (stating defendant was indicted on possession with intent to distribute cocaine and possession). Specifically, the indictment was brought under 21 U.S.C. § 841(a)(1), (b)(1)(A)(iii) and one count of possessing with intent to distribute powder cocaine under 21 U.S.C. § 841(a)(1), (b)(1)(C)). Id.
\(^96\) See id. (stating defendant was sentenced to 140 months’ imprisonment).
\(^97\) See Brinson-Scott, 714 F.3d at 621-22 (discussing admission of Brinson-Scott’s statement and head nod).
\(^98\) Id. at 622.
\(^99\) Id. at 621-23; see Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.”).
\(^100\) See United States v. Harris, 515 F.3d 1307,1311 (D.C. Cir. 2008) (declining review on custody issue within Miranda).
\(^101\) See id. at 1309 (stating defendant argues rights violated because subjected to custodial interrogation without Miranda advisement).
\(^102\) See id. at 1309.
\(^103\) See id.
informed the police of two guns in the bedroom and the police recovered them. The police also found a large quantity of PCD that suggested distribution. Harris was indicted for a number of drug offenses and motions were made to suppress statements regarding the guns. The district court held that Harris was not “in custody,” and therefore not entitled to Miranda warnings.

On appeal, the defendant claimed the conviction should be vacated because her Fifth Amendment rights against self-incrimination were violated. The court ultimately declined to reach the question of whether Harris was subjected to custodial interrogation based on similar reasoning of other D.C. court rulings and relied on harmless error, but did identify the Second Circuit “reasonable person” standard.

The final case of importance within D.C. is United States v. Gaston. A search warrant was issued based on confidential information to search Gaston’s row house. During the execution of the search warrant, ten to fifteen officers entered the home, handcuffed Gaston, and subsequently interviewed him. Before the search began, police asked Gaston for his personal information and whether he owned the house, which he co-owned with his sisters. Gaston was not provided his Miranda warnings prior to giving these statements. These statements were subsequently offered at Gaston’s trial and he was convicted for drug trafficking offenses.

The court determined the Miranda custody issue was not necessary to determine this case. The court focused on the importance of handcuffs in its analysis, but determined they were only one factor to

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104 Id.
105 See Harris, 515 F.3d at 1309.
106 Id.
107 Id.
108 See id. at 1311 (summarizing defendant’s argument).
109 See id. (holding link between defendant’s knowledge was minimal compared with amount of physical evidence against defendant); see also United States v. Newton, 369 F.3d 659, 676 (2d. Cir. 2004) (providing reasonable person would believe they were in custody when placed in handcuffs).
110 357 F.3d 77 (D.C. Cir. 2004).
111 See id. at 79 (stating ATF obtained reliable information providing basis for search warrant).
112 Id. at 81.
113 See id. at 81-82.
114 See id. at 82.
115 See Gaston, 357 F.3d at 81-82.
116 See id. at 82 (relying on “administrative questioning” exemption under Miranda rather than analyzing detention itself).
Additionally, the court identified the test to be, would a reasonable person understand the situation “to be comparable to a formal arrest.” Instead, the court categorized the substance of the interview as “booking” rather than dealing with the overall question of custody, despite the use of handcuffs and the presence of several police officers. The court held this line of questioning was related to “administrative concerns” described in Muniz and identified this exception under Miranda.

Overall, the D.C. Circuit has failed to directly answer the question thus far, however it has clearly identified that handcuffs alone are insufficient to determine whether a detainee is in custody that satisfies the requirements of Miranda. The D.C. Circuit identifies handcuffs as an important factor that should be considered in the overall analysis, however many cases that involve the use of handcuffs are decided on the basis of inconsequential error or under an administrative exception.

**B. The Circuits Outside of D.C.**

Although the D.C. Circuit has failed to answer this question, other circuits have taken various positions on either side when deciding the handcuff issue during the execution of search warrants. Some circuits are in agreement that handcuffing a suspect does not automatically invoke Miranda implications, while others hold that handcuffs rise to the requisite level of formal arrest.

In the Fourth Circuit, the courts focus on an objective standard of whether or not the detainee felt free to terminate the encounter rather than

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117 See id. (addressing government’s argument that handcuffing does not automatically constitute custody).
118 See id. (finding custody is an objective standard).
119 See id.
120 See Gaston, 357 F.3d at 82; see also Pennsylvania v. Muniz, 496 U.S. 582, 601-02 (1990) (allowing routine booking questions “reasonably related to administrative concerns” without prior Miranda warnings).
121 See supra Section III.A (discussing D.C. circuit decisions with respect to handcuffed detainees).
122 See United States v. Richardson, 36 F. Supp. 3d 120, 129 n.9 (D.D.C. 2014); see supra Section III(a).
123 Compare United States v. Leshnik, 65 F.3d 1105, 1109-10 (4th Cir. 1995) (holding threats and heavy police presence does not automatically rise to custodial arrest for Miranda), with United States v. Cowan, 674 F.3d 947, 957-58 (8th Cir. 2012) (holding defendant was in custody when suspect reasonably believed they could not end the encounter), and United States v. Newton, 369 F.3d 659, 676 (2d Cir. 2004) (holding reasonable person in handcuffs would not feel free to leave, thus in custody).
124 See cases cited supra note 4 (describing varying jurisprudence among circuits on issue of handcuffs).
simply the subjective belief of the detainee. Specifically, in United States v. Leshuk, the court dealt with a warrantless detainment, unlike the other circuits, and reasoned that even a subjective belief does not automatically elevate a detainment to the requisite level of custody for Miranda.

Leshuk dealt with a turkey hunter who discovered a patch of marijuana and ultimately located the three suspects, including Leshuk. The police officers identified themselves to the suspects, patted them down, and one carried a firearm. Police told the suspects they were investigating nearby marijuana plants, and asked the suspects about the contents of their belongings. Throughout this interaction, the police asked the suspects’ various questions regarding their reasons for being at the site and the bags, but the suspects either remained silent or denied ownership of the bags. The defendants were eventually placed under arrest, but at no time prior to their arrest were they informed of their Miranda rights, which sparked this appeal.

The Leshuk court continued their analysis and named several factors it considered important, but not enough to elevate a detainment to a custodial arrest for Miranda purposes. These factors include drawing weapons, the use of handcuffs on a suspect, placing the suspect in the police car, heavy police presence and the threat of force; however, these do not automatically “elevate a lawful stop into a custodial arrest for Miranda purposes.” Ultimately, the Court determined the requisite level of custody for Miranda required more than a showing that the police questioned the defendant prior to placing the defendant under formal arrest.

Similarly, the Ninth Circuit examines the conduct of the police, but

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125 See Leshuk, 65 F.3d at 1109 (Stansbury v. California, 511 U.S. 318, 318 (1994)) (“[The detainee’s] objective belief is important to the assessment of whether a stop is considered custodial given that ‘the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.”).
126 65 F.3d 1105 (4th Cir. 1995).
127 See Leshuk, 65 F.3d at 1109 (identifying subjective beliefs of detainee or police as irrelevant in custody analysis).
128 Id. at 1106-07.
129 Id. at 1107. Neither of the officers were in uniform. Id.
130 Id. (identifying two backpacks near suspects and brown garbage bag).
131 Id.
132 Leshuk, 65 F.3d at 1107-08.
133 Id. at 1109-10.
134 Id.
135 Id.
also other factors, such as the environment the detainment took place. The Ninth Circuit requires *Miranda* warnings more broadly than other courts, specifically requiring warnings during a *Terry* stop if the questioning “takes place in a police dominated” location. The courts in this circuit conduct a thorough factual examination to determine objective reasonableness. *United States v. Bautista* provides the clearest example of how this issue is resolved within the Ninth Circuit, but did leave some factors “open to question.”

The defendants in *Bautista* robbed a bank in Woodland Hills, California. Police issued a broadcast to local patrolmen describing the bank robbers. Two police officers heard the broadcast and matched the description to Bautista and Martinez, who were found in close proximity to the getaway vehicle. The officers eventually stopped the individuals, frisked them for weapons, and handcuffed them.

Police questioned the two suspects separately and asked questions pertaining to their identity, the identity of the other detainee, the model and make of the vehicle they were driving, the knowledge of the area, and who they knew in the area. Police considered the answers to these questions “suspicious,” and the answers conflicted with one another. The two claimed they did not know each other’s names, who they were meeting, or why they were in the area. Police eventually informed the defendants they were under arrest based on the separate interviews that took place.

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136 See United States v. Bautista, 684 F.2d 1286, 1292 (9th Cir. 1982) (identifying reasonable person standard and other factors courts within circuit examine); see also United States v. Booth, 669 F.2d 1231, 1235 (9th Cir. 1981) (“[L]anguage used by the officer to summon the individual, the extent to which he or she is confronted with evidence of guilt, the physical surroundings of the interrogation, the duration of the detention and the degree of pressure applied to detain the individual”).

137 See Bautista, 684 F.2d at 1291 (recommending *Miranda* warnings during “police dominated” atmospheres, but not required in all *Terry* stops).

138 See id. at 1292 (identifying factors, primarily conduct of police, and how it impacts detainee).

139 684 F.2d 1286 (9th Cir. 1982).

140 See id. at 1292 (analyzing initial stop, impact of handcuffs, length of detention and validity of detainment). But see id. (questioning relevance of police confronting detainee with evidence of guilt).

141 Id. at 1287.

142 Id. The broadcast described the robbers as being armed, of Mexican and Iranian descent, and location of getaway vehicle. Id.

143 Id.

144 Bautista, 684 F.2d at 1287.

145 Id. at 1287-88.

146 Id.

147 Id.

148 Id. at 1288.
On appeal, the Bautista court rejected claims regarding the failure of police to issue Miranda warnings. The court reasoned that the defendants were not placed in custody and entitled to Miranda warnings because “on-the-scene questioning”, which allow police to gather information, do not create a situation where Miranda warnings are required, and being in handcuffs does not equate to being placed in custody to constitute Miranda warnings.

Bautista described the “reasonable person” standard used in some circuits, but also explicitly examined the conduct of the police.

The Eighth Circuit similarly relies upon the “objective reasonable belief” that the detainee felt they could not end the encounter or that they were restrained to the level of formal arrest, but also relies upon six non-exclusive factors. Similar to the other circuits, this analysis requires an in depth factual analysis. The Griffin court initially identified the factors the Eight Circuit relies on and discusses both a subjective and objective analysis.

In Griffin, the defendants robbed a bank and the robbery was subsequently investigated by the F.B.I. The F.B.I. eventually obtained information that linked Griffin to the crime, and they decided to speak to him. The F.B.I. set up a meeting with Griffin in his home and when the officers arrived, Griffin told them at his front door that, “[t]he gun wasn’t loaded.”

The agents spoke to Griffin privately in his home, did not draw their guns or inform Griffin of his Miranda rights. However, the police informed Griffin he was free to leave at anytime and that he was no under

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149 Bautista, 684 F.2d at 1292.
150 See id. at 1291-92 (holding “on-the-scene questioning” does not create coercive atmosphere, and handcuffs are not dispositive of custody).
151 See id. (citing United States v. Booth, 669 F.2d 1231, 1235 (9th Cir. 1981)).
152 See United States v. Diaz, 736 F.3d 1143, 1148 (8th Cir. 2013) (identifying “six non-exclusive” factors courts rely upon to determine custody).
153 See United States v. Griffin, 922 F.2d 1343, 1349-52 (8th Cir. 1990) (discussing lengthy requirements imposed by courts nationwide and factors associated).
154 Id. The court notes its concern “with the suspect’s subjective belief that ‘his freedom of action is curtailed to a degree associated with formal arrest’ and whether that belief is objectively reasonable under the circumstances” thereby introducing a subjective and objective analysis. Id. at 1349 (quoting Berkemer v. McCarty, 468 U.S. 420, 439 (1984)).
155 Id. at 1345.
156 See id. at 1345-46 (detailing F.B.I. investigation linking Griffin and robbery).
157 Id. The purpose of this meeting was to determine what Griffin knew about the robbery, and the police did not intend to arrest him at his home. Id. Griffin made his admission immediately after the police identified the reason they were at his home, and his statement regarding the gun implied his involvement in the robbery. Id.
158 Griffin, 922 F.2d at 1345-46.
The interview lasted two hours and at the end of the interview, the agents arrested Griffin for his involvement in the robbery. Griffin was eventually indicted on robbery and gun charges and conditionally pled guilty to those charges.

Griffin identified the most “effective means” to determine custody as whether the individual was actually informed of their formal arrest. Additionally, formal notice to the defendant by the police is considered a substantial factor to determine whether the suspect felt free to leave. The Griffin court then described a second factor, specifically, how restraint on freedom of movement factors in to the custody determination. This court does identify that a detainee under “guard” by the police is more indicative of formal arrest than not, but that it definitely impacts the detainee’s belief they cannot leave to some extent. Griffin goes on to describe the other remaining factors, such as who initiated the contact, the tactics the police used and who “dominated the interview” and presents how lengthy the analysis can be and requires objective evidence to support subjective beliefs of formal arrest. Importantly, Griffin identified that police officers should issue Miranda warnings “as a matter of course.”

United States v. Cowan utilized the factors presented by Griffin and found the defendant was in custody for Miranda purposes because “a reasonable person in Cowan’s position would not have felt free to end the questioning and leave.” In Cowan, the police’s conduct, which included a frisk of the defendant and questioning without reading their rights, elevated to custody for Miranda purposes.
Cowan dealt with a crack cocaine operation that officers believed was operating between Davenport, Iowa and Chicago, Illinois. During police surveillance, the officers noticed individuals sitting in a vehicle outside an apartment, and believed this vehicle was involved in the drug operation. Police eventually obtained a search warrant, searched the apartment, and handcuffed Cowan.

Before the police searched the apartment, they frisked and interviewed Cowan. Police told Cowan that he could leave if the car outside the apartment was not his, however, police subsequently determined he owned the car and arrested Cowan. Once he was under arrest, police issued *Miranda* warnings for the first time, and Cowan made incriminating statements.

On appeal, the court determined that Cowan was in custody for *Miranda* purposes and relied upon the factors presented in *Griffin*. The court believed the interview of Cowan, while he was placed in cuffs in a police dominated environment, required *Miranda* warnings. The court believed that, although the atmosphere where the interview takes place is important, the critical question is "whether the defendant's freedom was restricted in any way."

Recently, the *Jarquin-Espinoza* court questioned the current application of the *Griffin* six-factor test within the Eighth Circuit. The

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171 Id. at 951.
172 See id. (describing apartment associated with Johnny Booth, who police believed was involved with operation).
173 Cowan, 674 F.3d at 951. Police broke down the door to the apartment and entered to serve the warrant. Id. While inside, the officers noticed several individuals, including Cowan. Id. Cowan was eventually handcuffed. Id.
174 Id. Detectives patted down Cowan and asked him questions regarding his identification and how he came to the apartment. Id. Cowan told police he took a bus from Chicago, however police discovered Cowan had keys on him and the police suspected Cowan was lying to them. Id. Id. Police informed Cowan that if the car did not belong to him, that he was free to leave. Id. The keys they obtained from Cowan matched the vehicle outside the apartment and the police used drug-sniffing dogs during their search of the vehicle. Id. The dogs and the officers eventually discovered crack cocaine in Cowan’s car. Id.
176 See id. at 951-52 (describing Cowan’s incriminating responses, specifically that he drove drugs from Chicago to Davenport).
177 See id. at 957 (citing United States v. Griffin, 922 F.2d 1343, 1349 (8th Cir. 1990)).
178 See id. at 957-58 (holding no reasonable person in Cowan’s position would have felt free terminating encounter and ending questioning).
179 Id. at 957 (analyzing Cowan’s detention under *Griffin* and *Martinez*); see also United States v. Martinez, 462 F.3d 903, 909 (holding reasonable person would not feel free leaving questioning when handcuffed and questioned by police).
court identified the six-factors from *Griffin* and discussed the deficiencies with the test.  

The *Jarquin-Espinoza* court went on to analyze the factors set forth in *Griffin* and analyzed each factor independently. The court ultimately identified that determining custody “is more complicated than simply tallying up the six *Griffin* factors, it must be noted that five of the factors weigh in favor of a finding of custody.”

The Second Circuit has a more focused approach to determining custody for *Miranda* purposes. [*United States v. Newton*](#) is one of the more recent cases that heavily considers whether handcuffs were used and describes other courts that suggests handcuffs may be a dispositive factor. *Newton* held that the defendant was in custody for *Miranda* purposes, notwithstanding specific advice that he was not under arrest.

Factually, the *Newton* court dealt with an individual who had an extensive criminal history. Officers received information that the defendant had threatened to kill his mother and her husband. This information resulted in the police conducting a “safety search” of the apartment where Newton and his mother resided.

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181 See id. at *12-13 ("The first three factors tend to mitigate the existence of custody at the time of questioning, while the remaining three factors tend to aggravate the existence of custody.").

182 See id. at *21-24 (analyzing six-factor test set forth in *Griffin* in detail). The court separated the first three factors (whether suspect was informed they were free to leave, whether suspect was unrestrained and whether the suspect initiated contact) as factors that “mitigate” the existence of custody during questioning. Id. at *13. The court then identified the last three factors (whether strong arm tactics were used, atmosphere was police dominated, and whether suspect was under arrest at the end of questioning) as factors that tend to aggravate the existence of custody. Id. The court believed that “affirmative answers” to the final three questions would suggest the suspect was in custody for *Miranda* purposes. Id.

183 See id. at *24 (identifying majority of *Griffin* factors suggest suspect was in custody for *Miranda*).

184 See [*United States v. Newton*, 369 F.3d 659, 676 (2d Cir. 2004)](#) (identifying reasonable belief that handcuffs equal custody for *Miranda* purposes).

185 369 F.3d 659 (2d Cir. 2004).

186 See id. at 676 (identifying handcuffs as “hallmark of formal arrest”). The court also discussed the implications handcuffs have on the reasonable person’s perception of freedom. Id.

187 See id. at 663 (recognizing police informing Newton he was not under arrest). The court however limited the relevance because he was placed in handcuffs and not free to move. Id.

188 See id. at 663 (recounting Sewn Newton’s criminal history, including three prior felony convictions).

189 Newton, 369 F.3d at 663. The police obtained this information by telephone from a social worker who represented a victim services organization. Id. The social worker had recently communicated with Newton’s mother, discovered the threats Newton made, and informed the police immediately. Id. Newton’s mother also informed the social worker that her son kept a firearm in a shoebox near the front door of her home. Id.

180 Newton, 369 F.3d at 663. Police were also advised by their supervisors to arrest Newton immediately based on a potential parole violation if a gun was found within the apartment. Id.
Six officers, three parole officers and three police, arrived at the apartment around 8:00 a.m. and were greeted by Newton wearing only his underwear. A parole officer immediately told Newton to go into the hallway where he proceeded to place him into handcuffs without reading his Miranda rights. The officer did inform Newton that he was not under arrest and the handcuffs were only a safety measure. The officers eventually brought Newton into the apartment from the hallway, and began asking him questions. As a result of the police’s questioning and ultimate discovery of a firearm, Newton was placed under arrest for violating parole.

The Newton court “conclude[d] that a reasonable person would have understood that his interrogation was being conducted pursuant to arrest-like restraints.” The Newton court relied on the “free-to-leave” inquiry and considered the level of restriction on freedom. The “free-to-leave” test is adopted and approved of in many jurisdictions, but the practical application of the test is difficult to apply.

The circuits unanimously identify handcuffs as an important factor in the analysis of whether a detainment rises to the requisite level of custody to require Miranda warnings. Additionally, all of the circuits rely on whether the suspect feels free to leave, but that determination invites varying analysis that has been interpreted in a multitude of ways.

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191 Id.
192 Id.
193 See id. (describing conversation between Officer Barry Davis and Newton).
194 Id. Police asked Newton a series of questions, including the location of his mother and girlfriend and whether he had contraband in the apartment. Id. Newton responded that the only contraband in the house was “only what is in the box” and made a gesture towards a shoebox. Id. at 663-64. The shoebox contained an unloaded .22 automatic weapon and “a fully loaded magazine.” Id. at 664.
195 Newton, 369 F.3d 663.
196 Id. at 677.
197 Id. at 672 (identifying “free-to-leave” inquiry as “whether reasonable person would believe they were not free” to end encounter).
198 See Michigan v. Chesternut, 486 U.S. 567, 573 (1988) (identifying court’s approval of “free-to-leave” inquiry). The court also acknowledged that police may make their own objective determinations of whether the suspect is free to end the encounter. Id.; see also Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984) (identifying Miranda application usually applies only when suspect objectively felt they were under formal arrest).
199 See supra Section III (describing different approaches by circuits that unanimously identify handcuffs as important factor).
200 See supra Section III (explaining different interpretations of whether a suspect feels free to leave between different circuits).
IV. ANALYSIS

The past fifty plus years gave rise to the much-needed prohibition of coercion of statements through Miranda, but with that, came the confusing and complex application of those rights.\(^{201}\) The media is certainly partly to blame for how individual American citizens know when and how to enact their rights, but should it be left solely to the individual to protect their own rights or should these rights be protected at all times?\(^{202}\)

The confusing nature of these various tests presents a difficult conundrum for litigators in cases like these, especially for the defense to show objective factual support.\(^{203}\) Requiring a multitude of factors to satisfy “custody” to preserve the right against self-incrimination runs the risk of making it too difficult for detainees to obtain these rights and implies the detainees should be more aware of the situation they are in and invariably refuse to speak to police.\(^{204}\)

For the past 100 years, the government has had the advantage in these cases.\(^{205}\) Police could do whatever they wanted; it was a wild west of sorts, until the twentieth century when courts began clamping down.\(^{206}\) The advantage was reduced during the Miranda era; however, the government still maintained the advantage because the right against self-incrimination and right to counsel could only be invoked in a “formal arrest.”\(^{207}\) Litigants can still make that argument, that it is not the police’s job to preserve these rights, but instead the responsibility of the detainee to

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\(^{201}\) See supra Section II (presenting history of Miranda protections and the evolution over time).

\(^{202}\) See supra Section II (describing intimidation during detention because of police presence and questioning).

\(^{203}\) Compare United States v. Newton, 369 F.3d 659 (2d Cir. 2004) (holding reasonable person would understand interrogation while handcuffed during restraint), and United States v. Griffin, 922 F.2d 1343 (8th Cir. 1990) (holding suspect, while in his home, was under custodial environment and required Miranda warnings), with United States v. Leshuk, 65 F.3d 1105 (4th Cir. 1995) (holding suspect placed in police car for questioning and threatened with force does not necessarily constitute custody for Miranda).

\(^{204}\) See Griffin, 922 F.2d at 1349 (explaining a lengthy six-part factual analysis required when determining custody for Miranda purposes).


\(^{206}\) See cases cited supra note 8 (describing evolution in jurisprudence towards individual rights prior to Miranda).

\(^{207}\) See Berkemer v. McCarty, 468 U.S. 420, 434 (1984) (holding suspect entitled to judicial safeguards under Miranda). The court further specified that these safeguards apply “regardless of the nature or severity of the offense of which he is suspected or for which he was arrested.” Id. (emphasis added).
affirmatively invoke these protections. Conversely, the government should not be required to go through unnecessary and burdensome steps while protecting communities from criminals.

The multi-factor objective test requires a lengthy factual analysis and it is questionable for multiple reasons. First, police officers are usually not lawyers and do not have the time to analyze the facts through a multiple step test to determine whether Miranda warnings should be given. Second, recent cases related to police authority and individual rights have seen the creation and rise of bright-line rules. For example, bright-line rules in other areas of procedure allows the individual defendant notice of what to expect and allows the police to carry on their duties after a few short sentences.

The reasonable person standard from Newton presents a similar factual analysis that may be too complicated for police officers to follow during the course of their job and interactions with suspects. Additionally, requiring police officers to determine reasonableness on the job may be too burdensome on a daily basis. More importantly,

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209 See Miranda, 384 U.S. 436 (1966) (requiring police inform all suspects who are formally arrested of Constitutional rights going forward).

210 See United States v. Griffin, 922 F.3d 1343, 1349 (8th Cir. 1990) (identifying lengthy six-factor test for determining custody). Griffin likely presented these six factors to aid police and litigants to help determine when a suspect is in custody for Miranda. See id. at 1349-52 (spending a significant amount of time dissecting the issues and the factors). However, implementing a legal test that includes six factors requires a substantial amount of legal resources and may be difficult for police in determining when rights are required. See id. (questioning why police did not just issue warnings at outset).


213 Compare Roper, 543 U.S. at 574 (establishing bright-line rule that Eighth Amendment forbids imposition of death penalty on minors), and Gary, 91 A.3d at 107 (explaining “automobile exception” warrant requirement allowing police officers search vehicle with probable cause ), with Griffin, 922 F.2d at 1354 (identifying objective multi-factor test, which is devoid of “bright-line,” when determining Miranda custody).

214 See United States v. Newton, 369 F.3d 659 (2d Cir. 2004) (describing reasonable person standard and associated factors determine custody). The test requires an assessment of the situation to determine whether the suspect would reasonably feel free to leave and whether there were indications to the defendant that he had the opportunity to leave. Id. at 669.

215 See Newton, 369 F.3d at 669 (describing lack of clear guidance on custody issue under Miranda). It may be unreasonable to expect police to understand the “in custody” indicia under
litigating whether a detainee was in custody under the free-will test is costly and requires a lengthy analysis. There has been indication from courts that police should read *Miranda* warnings to any suspect that is detained as a matter of course.

Some litigants are automatically at a disadvantage because some courts flat out reject handcuffs as placing the suspect in *Miranda* custody without other supporting evidence. The facts of *Bautista* for example, under the *Newton* test may have produced a different result. This is the conundrum litigants and suspects throughout the country are presented with, inconsistent rulings on important constitutional protections. Barring a bright-line rule requiring all suspects detained by police be read their rights, all circuits should hold the use of handcuffs renders a detainee unable to end the encounter with police.

The D.C. Circuit has been particularly unhelpful in this area; they simply refuse to side one-way or the other on the issue. The circuit’s refusal to analyze custody under *Miranda* may suggest the issue is too complex for an appellate court to venture into and are deferring to the Supreme Court to hear the issue. A valid question for this court, and others that do not feel handcuffs restrain liberty under *Miranda* is, how can a police officer or detainee understand the law if the courts refuse to explain it?

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*Miranda*, if there is no “bright-line” rule on the subject. Id.

216 See *id.* at 669 (presenting several factors required for showing custody for *Miranda* purposes).

217 Id.

218 See United States v. Bautista, 684 F.2d 1286, 1292 (9th Cir. 1982) (identifying use of handcuffs outside of formal arrest, for example for office safety).

219 Compare *id.* (holding suspect was not in custody despite being handcuffed), with *Newton*, 369 F.3d at 669 (holding suspect in custody for *Miranda* purposes because he was handcuffed).

220 See United States v. Richardson, 36 F.Supp. 3d 120, 129 n.9 (D.D.C. 2014) (identifying similar factual circumstances resulting in stark differences throughout the country).

221 See *Newton*, 369 F.3d at 669 (holding no reasonable person would believe use of handcuffs allows them to end encounter with police).


223 See *Gaston*, 357 F.3d at 82 (identifying authority in other circuits that would resolve custody question, but deciding under another doctrine).

224 See *Brinson-Scott*, 714 F.3d at 621 (refusing answering *Miranda* custody question because simpler alternatives existed).
V. CONCLUSION

It is inevitable that the circuits will split on the application of different legal principles based on geographical politics, philosophical beliefs, and jurisprudence. However, the circuits should be unified on essential constitutional rights, such as the Fourth and Fifth Amendments. The current state of the law with respect to Miranda protections is unevenly applied and these constitutional protections vary based on geography. Constitutional protections in other areas have been evenly applied and that equal application must extend into this area. The rationale for the Fourth and Fifth Amendments is derived from the prohibition of police coercion. These varied legal tests and analyses create opportunities for the police to potentially coerce individuals because they are not required to provide Miranda warnings in circumstances where suspects are handcuffed. A bright-line rule requiring the police to inform handcuffed suspects in all instances of their Miranda rights would preserve individual liberties and prohibit police from unnecessary coercion.

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