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## **In Need of Clarification: A Call to Define the Scope of the Routine Booking Exception by Adopting the Legitimate Administrative Function Test**

### **Cover Page Footnote**

J.D. Candidate, May 2014, The Catholic University of America, Columbus School of Law; B.A., 2009, The College of William & Mary. The author wishes to thank her colleagues on the Catholic University Law Review for their valuable work on this Comment, as well as her family and friends for their support throughout law school.

# IN NEED OF CLARIFICATION: A CALL TO DEFINE THE SCOPE OF THE ROUTINE BOOKING EXCEPTION BY ADOPTING THE LEGITIMATE ADMINISTRATIVE FUNCTION TEST

By Elizabeth Parrish<sup>+</sup>

Legal scholar Akhil Amar has stated that “[t]he self-incrimination clause of the Fifth Amendment is an unsolved riddle of vast proportions, a Gordian knot in the middle of our Bill of Rights.”<sup>1</sup> One strand of the Fifth Amendment’s protection against self-incrimination currently confusing both scholars and courts alike is the so-called routine booking exception to *Miranda v. Arizona*’s protection against compelled statements during custodial interrogations.<sup>2</sup>

After an arrest, law enforcement must routinely ask a suspect certain questions, such as their name, address, and birth date.<sup>3</sup> Traditionally, courts have excepted these booking questions from the procedural requirements

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1. AKHIL REED AMAR, *THE CONSTITUTION AND CRIMINAL PROCEDURE: FIRST PRINCIPLES* 46 (1997); see also George C. Thomas III & Mark Greenbaum, *Justice Story Cuts the Gordian Knot of Hung Jury Instructions*, 15 WM. & MARY BILL RTS. J. 893, 893 (2007) (defining a “common law Gordian Knot” as “a doctrine so complex and inconsistent that it provides little guidance to judges and often blinds them to the perversity of the way the doctrine works”); Steven C. Sparling, Note, *Cutting the Gordian Knot: Resolution of the Sentencing Dispute Over Dismissed Charges After United States v. Watts*, 6 GEO. MASON L. REV. 1073, 1073 n.8 (1998) (“According to legend, the Gordian knot was tied by Gordius, King of Phrygia. Only the future ruler of Asia could untie the knot; Alexander the Great cut the knot with his sword. In modern parlance it means an intricate problem.”).

2. See *Alford v. State*, 358 S.W.3d 647, 656 (Tex. Crim. App. 2012) (agreeing with the State’s contention “that ‘booking exception cases around the country are confusing and conflicting’”), cert. denied, 133 S.Ct. 122 (2012); see also Petition for Writ of Certiorari at 9, *Alford*, 358 S.W.3d 647 (No. 11-1318) (“Courts have adopted varying and inconsistent tests to determine whether a particular question falls within the routine booking exception.”); Megan S. Skelton & James G. Connell, III, *The Routine Booking Question Exception to Miranda*, 34 U. BALT. L. REV. 55, 74 (2004) (noting the existence of “confusion in the lower courts”).

3. See *State v. Rheaume*, 853 A.2d 1259, 1263 (Vt. 2004) (explaining that “identification of the arrested person is central to the police processing function”); Skelton & Connell, *supra* note 2, at 55. Many states have enacted statutes mandating that officers collect specific information from arrestees. For example, Connecticut requires officers to collect “definite information relative to the identity of each person so arrested.” CONN. GEN. STAT. ANN. § 29-11(a)(2) (West 2008). Similarly, the Texas Administrative Code requires police to establish a file on each inmate upon intake. 37 TEX. ADMIN. CODE. § 265.4(a) (2008). This file must include, among other information, the inmate’s name (including aliases), address, date of birth, and an inventory of the suspect’s property. *Id.*

announced by the Supreme Court in *Miranda v. Arizona*.<sup>4</sup> However, the question remains: how are police to proceed when “routine” questions could potentially elicit incriminating information from the suspect, thereby implicating the suspect’s Fifth Amendment rights?<sup>5</sup>

In *Miranda v. Arizona*, the Court explained that the Fifth Amendment privilege against self-incrimination requires that police advise a suspect of certain rights in order to render the suspect’s statement made during a custodial interrogation admissible in court.<sup>6</sup> Since that decision, the Court has gradually restricted the scope of the doctrine by holding certain types of custodial interrogations exempt from *Miranda*’s procedural requirements.<sup>7</sup> For example, during the mid-1970s, lower courts began to recognize a “routine booking question exception” to *Miranda*, concluding that suspects’ responses to police inquiries seeking biographical information during the booking process were admissible at trial absent a *Miranda* warning.<sup>8</sup> The Supreme Court has addressed the exception in several opinions since *Miranda*, but has largely failed to define the exception’s scope.<sup>9</sup>

The Supreme Court first suggested that an exception to *Miranda* may exist for routine booking questions in *Rhode Island v. Innis*, although the issue presented in that case was the definition of “interrogation” as used in *Miranda*.<sup>10</sup> In defining that term, the court excluded routine booking questions, stating that “the term ‘interrogation’ under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (*other than those normally attendant to arrest and custody*) that the police should know are reasonably likely to elicit an incriminating response from the suspect.”<sup>11</sup> Ten years later in *Pennsylvania v. Muniz*, the Court specifically addressed the routine booking exception but provided no clear rule

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4. See, e.g., *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990) (plurality opinion) (explaining that questions seeking only biographical data are exempted from the *Miranda* requirements).

5. Megan Skelton and James Connell describe several scenarios where such a problem may arise. Skelton & Connell, *supra* note 2, at 55–56. For example, “[i]f a driver’s license and social security card list two different names, the answer to ‘What is your name?’ could be used in a prosecution for obstruction of justice, forged documents, or any number of other crimes.” *Id.* at 55. Similarly, a suspect’s answer to an officer’s inquiry about his address could incriminate him if police had recently conducted a search of the house and discovered evidence of criminal conduct therein. *Id.* at 55–56.

6. *Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966).

7. See JAMES J. TOMKOVICZ, CONSTITUTIONAL EXCLUSION: THE RULES, RIGHTS, AND REMEDIES THAT STRIKE THE BALANCE BETWEEN FREEDOM AND ORDER 108–09 (2011); LAWRENCE S. WRIGHTSMAN & MARY L. PITMAN, THE MIRANDA RULING: ITS PAST, PRESENT, AND FUTURE 117 (2010); Skelton & Connell, *supra* note 2, at 59.

8. See Skelton & Connell, *supra* note 2, at 60.

9. See *id.* at 56.

10. *Id.* at 62 (citing *Rhode Island v. Innis*, 446 U.S. 291 (1980)).

11. *Innis*, 446 U.S. at 301 (emphasis added).

or standard for when it should apply.<sup>12</sup> A four-justice plurality merely concluded that police questions that are only asked “for record-keeping purposes” and that are “reasonably related to the police’s administrative concerns. . . . fall outside the protections of *Miranda*.”<sup>13</sup>

Lower courts have consistently accepted the existence of a routine booking exception to *Miranda*, but remain “deeply divided” over the exception’s scope.<sup>14</sup> Thus, a circuit split has emerged as courts attempt to identify the boundaries of the exception in light of the Supreme Court’s pronouncements in *Innis* and *Muniz*.<sup>15</sup> Courts have developed three approaches for determining when the exception applies: a should-have-known test, an intent test, and a legitimate administrative function test.<sup>16</sup>

Relying on language the Supreme Court used in *Innis*, the United States Courts of Appeals for the First, Second, Sixth, Eighth, and Ninth Circuits have applied an objective should-have-known standard, which requires an officer to give a *Miranda* warning when the officer should have known or expected that a booking question was reasonably likely to elicit an incriminating response.<sup>17</sup> The Fourth, Fifth, Tenth, and Eleventh Circuits, relying on the *Muniz* plurality opinion, have adopted a subjective intent test, which requires an officer to give a *Miranda* warning only if the officer intends his inquiry to elicit incriminating information.<sup>18</sup> Finally, the Court of Appeals for the District of Columbia

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12. Skelton & Connell, *supra* note 2, at 65 (citing *Pennsylvania v. Muniz*, 496 U.S. 582, 600–01 (1990) (plurality opinion)).

13. *Muniz*, 496 U.S. at 601–02.

14. See Petition for Writ of Certiorari, *supra* note 2.

15. See *Alford v. State*, 358 S.W.3d 647, 658–59 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012); Petition for Writ of Certiorari, *supra* note 2, at 9–10; Michelle Olsen, *Circuit Split Watch: Miranda at Booking*, APPELLATE DAILY (July 3, 2012, 7:21 AM), <http://appellatedaily.blogspot.com/2012/07/circuit-split-watch-miranda-at-booking.html>; see also *infra* Part I.C.1–3 (discussing the circuit split).

16. See Petition for Writ of Certiorari, *supra* note 2, at 9–10.

17. See *Alford*, 358 S.W.3d at 658; Petition for Writ of Certiorari, *supra* note 2, at 10. For example, the Second Circuit applied the should-have-known test in *United States v. Rodriguez*, concluding that “[t]here is nothing in the record to indicate that Agent Smith knew or should have known that evidence for an eventual prosecution would emerge from his administrative interview of Rodriguez.” 356 F.3d 254, 259 (2d Cir. 2004). Several state high courts have also adopted the should-have-known test. See, e.g., *State v. Rossignol*, 627 A.2d 524, 526 (Me. 1993) (explaining that the routine booking exception applies to administrative questions “not likely to elicit an incriminating response”).

18. See *Alford*, 358 S.W.3d at 659; Petition for Writ of Certiorari, *supra* note 2, at 12–13. For example, the Fifth Circuit applied the intent test in *United States v. Virgen-Moreno*, stating that “[t]he questions [went] beyond the routine booking question exception because they were designed to and indeed did elicit incriminatory admissions.” 265 F.3d 276, 294 (5th Cir. 2001). A few state high courts have also adopted the intent test. See, e.g., *State v. Chrisicos*, 813 A.2d 513, 516 (N.H. 2002) (noting that the question at issue did not qualify under the routine booking exception because it was designed to elicit an incriminating answer).

Circuit created a third test: the legitimate administrative function test.<sup>19</sup> Under this approach a *Miranda* warning is not required if, from an objective standpoint, the booking inquiry is reasonably related to a legitimate administrative function or concern.<sup>20</sup>

This Comment argues that the legitimate administrative function test is the proper test for determining whether an officer must give a *Miranda* warning during a routine booking inquiry and proposes two additional procedural safeguards to protect suspects from the possibility that law enforcement may abuse the exception. Part I sets forth an overview of *Miranda* and its progeny and explores the development of the routine booking exception. This Part then examines the circuit split over which test to apply when determining whether a police inquiry of a suspect satisfies the routine booking exception. Part II evaluates each of the three proposed tests both in terms of the tests' consistency with the Supreme Court's previous pronouncements on the routine booking exception and the degree to which each test encourages administrative efficiency. This Part argues that the legitimate administrative function test is most consistent with Supreme Court precedent on the exception and best promotes administrative efficiency at the police station and in the courts. Finally, Part III proposes that the legitimate administrative function test should be adopted as the proper test because it best accords with the routine booking exception as initially conceived by the courts. This Comment notes, however, that additional procedural safeguards are necessary to protect suspects from the possibility of abuse by law enforcement. To qualify under the routine booking exception, the police must ask the question at issue at the station during the actual booking process and the question must seek information (whether strictly biographical in nature or not) required to complete routine booking paperwork.

## I. THE EMERGENCE OF THE ROUTINE BOOKING EXCEPTION

### A. *Miranda's Protection of the Fifth Amendment Privilege Against Self-Incrimination*

The Fifth Amendment to the U.S. Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”<sup>21</sup>

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19. Petition for Writ of Certiorari, *supra* note 2, at 14; *see also* United States v. Gaston, 357 F.3d 77, 82 (D.C. Cir. 2004) (quoting Pennsylvania v. Muniz, 496 U.S. 582, 601–02 (1990) (plurality opinion)) (“[O]fficers asking routine booking questions ‘reasonably related to the police’s administrative concerns’ are not engaged in interrogation within *Miranda*’s meaning and therefore do not have to give *Miranda* warnings.”). Most recently, the Texas Court of Criminal Appeals also adopted the legitimate administrative function test. *Alford*, 358 S.W.3d at 659–60.

20. *Alford*, 358 S.W.3d at 659–60; Petition for Writ of Certiorari, *supra* note 2, at 14; *see* *Gaston*, 357 F.3d at 82 (concluding that the questions police posed to defendant Gaston regarding his address and home ownership status were sufficiently related to “administrative concerns” and thus did not require a *Miranda* warning).

21. U.S. CONST. amend. V.

The underlying rationale for the privilege against self-incrimination is to ensure that the government respects its citizens' dignity and integrity.<sup>22</sup> The framers originally established the privilege to prevent the government from forcing defendants to testify against themselves in court.<sup>23</sup>

In 1966, the Supreme Court broadened the privilege to custodial interrogations in its landmark opinion *Miranda v. Arizona*, noting that “the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk that an individual will not ‘be accorded his privilege under the Fifth Amendment . . . not to be compelled to incriminate himself.’”<sup>24</sup> In addition to protecting a defendant from self-incrimination at trial, the Fifth Amendment also prevents the government from coercing pre-trial disclosures and later using those disclosures against the defendant at trial.<sup>25</sup> Therefore, the Court held that in

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22. *Miranda v. Arizona*, 384 U.S. 436, 460 (1966) (describing the privilege against self-incrimination as a “substantive right” against an expansion in scope of governmental power over its citizens); see Skelton & Connell, *supra* note 2, at 59 (arguing that *Miranda* warnings serve to protect a suspect’s dignity).

23. See TOMKOVICZ, *supra* note 7, at 111. The inclusion of the Fifth Amendment privilege against self-incrimination in the Bill of Rights specifically reflected “the Framers’ opposition to courts that relied upon compulsion to extract sworn testimony from witnesses in the hope that factual inquiries would uncover uncharged and entirely uncorroborated offenses against the declarant,” such as the infamous Star Chamber, an ecclesiastical court that was prominent in England during the sixteenth and seventeenth centuries. Geoffrey B. Fehling, Note, *Verdugo, Where’d You Go?: Stoot v. City of Everett and Evaluating Fifth Amendment Self-Incrimination Civil Liability Violations*, 18 GEO. MASON L. REV. 481, 488 (2011); see *Doe v. United States*, 487 U.S. 201, 212 (1988) (“Historically, the privilege was intended to prevent the use of legal compulsion to extract from the accused a sworn communication of facts which would incriminate him. Such was the process of the ecclesiastical courts and the Star Chamber . . .”). Chief Justice Warren specifically referred to the Star Chamber in the *Miranda* opinion, describing the trial of John Lilburn in the Star Chamber as “the critical historical event shedding light on [the privilege against self-incrimination’s] origins and evolution.” *Miranda*, 384 U.S. at 459. For a detailed recounting of John Lilburn’s trial and the resulting events, see Jeffrey M. Feldman & Stuart A. Ollanik, *Compelling Testimony in Alaska: The Coming Rejection of Use and Derivative Use Immunity*, 3 ALASKA L. REV. 229, 233–35 (1986).

24. *Dickerson v. United States*, 530 U.S. 428, 435 (2000) (quoting *Miranda*, 384 U.S. at 439). The Court was particularly concerned about law enforcement’s increasing use of psychologically coercive techniques during custodial interrogations. *Miranda*, 384 U.S. at 448. The Court took note of language from various police manuals that suggested conducting interrogation in the investigator’s office so as to deprive the subject of any psychological advantage he or she may have otherwise possessed. See *id.* at 449. The manuals further dictated that “[t]he guilt of the subject is to be posited as a fact” and that officers should “minimize the moral seriousness of the offense,” instead “[casting] blame on the victim or on society.” *Id.* at 450. The Court concluded that it is obvious that the type of interrogation environment created by these policies only serves “to subjugate the individual to the will of his examiner.” *Id.* at 457.

25. TOMKOVICZ, *supra* note 7, at 111. The historical context underlying *Miranda* sheds light on the Court’s reasoning. The Warren Court decided *Miranda* at the height of a period where the Court was subjecting police practices to increasing scrutiny, thereby expanding the constitutional protections available to criminal suspects. Michael J. Roth, Note, *Berkemer Revisited: Uncovering the Middle Ground Between Miranda and the New Terry*, 77 FORDHAM L.

order to render a suspect's statement made during a custodial interrogation admissible in court, police must advise the suspect "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."<sup>26</sup> Without such a warning, any self-incriminating statements a suspect makes are in violation of the suspect's constitutional rights and thus are inadmissible in court as evidence of guilt.<sup>27</sup>

Since this decision, the Supreme Court has gradually restricted the doctrine's scope by holding certain types of custodial interrogations exempt from *Miranda's* procedural requirements.<sup>28</sup> For example, in *New York v. Quarles*, the Court created a public safety exception by holding that it is not necessary for police to give a suspect a *Miranda* warning before questioning when the inquiry is "reasonably prompted by a concern for the public safety."<sup>29</sup> Similarly, the Court has ruled that an undercover police officer posing as an inmate does not need to give a *Miranda* warning before asking an imprisoned suspect questions that could elicit incriminating responses.<sup>30</sup> The Court has

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REV. 2779, 2786 (2009); see also Mark Tushnet, *Observations on the New Revolution in Constitutional Criminal Procedure*, 94 GEO. L.J. 1627, 1627–28 (2006) (noting that the Warren Court's criminal procedure revolution was driven by concerns about both race and everyday policing). During this revolutionary period, the Justices of the Warren Court were frequently substituting their personal philosophies for constitutional principles. Roth, *supra*, at 2786–87.

26. *Miranda*, 384 U.S. at 444. These rights are so well known today that they are essentially "enshrined in our culture." Roth, *supra* note 25, at 2788. The suspect may, of course, voluntarily waive these rights after police have read the *Miranda* warnings; however, the prosecution cannot use any evidence acquired as a result of the interrogation against the suspect until such a waiver is proven at trial. 384 U.S. at 479.

27. See 384 U.S. at 444.

28. See TOMKOVICZ, *supra* note 7, at 109 (discussing limitations on *Miranda*, including the public safety and impeachment exceptions); WRIGHTSMAN & PITMAN, *supra* note 7, at 117 (criticizing some of the limitations on the use of *Miranda* warnings); Skelton & Connell, *supra* note 2, at 59 (noting that the Court has "chipped away" at the protection conferred by *Miranda*).

29. 467 U.S. 649, 655–56 (1984). Police officers located Quarles, a rape suspect, in a supermarket. *Id.* at 651–52. Upon seeing an officer, Quarles fled toward the back of the store where the officer apprehended him. *Id.* at 652. The officer frisked Quarles and discovered he was wearing an empty shoulder holster. *Id.* at 652. When the officer asked Quarles where the gun was, Quarles replied, "the gun is over there," and nodded toward a stack of empty cartons. *Id.* The officer arrested Quarles and read him his *Miranda* rights. *Id.* After Quarles agreed to answer questions without an attorney present, the officer asked him several questions about his possession of the gun. *Id.* The Supreme Court concluded that "overriding considerations of public safety" justified the officer's failure to read Quarles the *Miranda* warnings before asking where the gun was located. *Id.* at 651. The Court explained that in situations where public safety is threatened, the need to get answers outweighs the need for a rule protecting against self-incrimination. *Id.* at 657.

30. *Illinois v. Perkins*, 496 U.S. 292, 300 (1990). In *Perkins*, the government placed an undercover agent posing as a fellow inmate in Perkins's jail cell. *Id.* at 294. Although the agent was investigating Perkins for murder, Perkins was being held in jail on unrelated charges. *Id.* During a conversation with the agent, Perkins made incriminating statements about the murder. *Id.* at 294–95. Obviously, the agent did not read Perkins his *Miranda* rights before engaging

also created an exception allowing the government to introduce some statements at trial for the purpose of impeaching a witness, even if the police violated *Miranda*'s requirements in obtaining the statements.<sup>31</sup> The Court rationalized the creation of these exceptions in each case either by concluding that there were no policy reasons offered to justify the warning requirement, or that information needs outweighed the right not to incriminate oneself.<sup>32</sup> In sum, the *Miranda* requirements apply broadly to custodial interrogations, but the Court has gradually carved out certain exceptions to the doctrine for policy and administrative reasons.<sup>33</sup>

### B. The Routine Booking Exception Develops

#### 1. Lower Courts Begin to Recognize the Exception

During the mid-1970s, courts began to apply a new exception to *Miranda*'s requirements: admission of statements made by suspects during the booking process in response to police inquiries seeking biographical information.<sup>34</sup> One principal reason courts created the exception was to facilitate the administrative obligations of the police during the booking process.<sup>35</sup> Courts justified the admission of such statements on the grounds that questioning about routine biographical information conducted for administrative purposes did not qualify as interrogation.<sup>36</sup> The courts have explained that the intent of such questions is not to elicit incriminating information; therefore routine questions are exempt from the traditional *Miranda* requirements.<sup>37</sup>

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Perkins in conversation. *Id.* at 295. The Supreme Court ruled that the statements made by Perkins to the agent while the agent was undercover were admissible and rejected the contention that *Miranda* warnings are required whenever a suspect is technically "in custody" and speaking with an agent of the government. *Id.* at 297, 300. The Court further noted that although *Miranda* strictly prevents the use of *coercion*, it does not forbid "mere strategic deception" gained through misplaced trust. *Id.* at 297.

31. *Harris v. New York*, 401 U.S. 222, 224–26 (1971). Harris testified in his own defense at his trial for selling heroin. *Id.* at 222–23. On cross-examination, the prosecution asked Harris whether his direct testimony at trial contradicted earlier statements that he made to police at the time of his arrest. *Id.* at 223. The prosecution conceded that the allegedly contradictory statements made at arrest were inadmissible under *Miranda*, but argued that the statement should be permissible as relevant to the witness's credibility. *Id.* at 223–24. The Supreme Court upheld the introduction of the inconsistent statements for the purpose of impeaching Harris' credibility, concluding that *Miranda* should not be used to prevent the prosecution from impeaching a criminal defendant's perjured testimony. *Id.* at 226.

32. Skelton & Connell, *supra* note 2, at 60.

33. *Id.* at 59–60.

34. *Id.* at 60 & n.36.

35. *Jones v. United States*, 779 A.2d 277, 290 (D.C. 2001) (Mack, J., dissenting); Brief in Opposition to Petition for Writ of Certiorari at 20, *Alford v. Texas*, 358 S.W.3d 647 (Texas Crim. App. 2012) (No. 11–1318).

36. Skelton & Connell, *supra* note 2, at 60–61.

37. See *United States v. La Monica*, 472 F.2d 580, 581 (9th Cir. 1972) (explaining that the facts showed that the officer's questions about an item were intended at the time to identify and

## 2. *The Supreme Court First Alludes to the Exception*

The Supreme Court first suggested that an exception to *Miranda* may exist for routine booking questions in the 1980 case, *Rhode Island v. Innis*.<sup>38</sup> However, the issue presented to the Court in *Innis*, was how to interpret “interrogation” as used by the *Miranda* Court.<sup>39</sup> The Court held that the term “refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.”<sup>40</sup> The Court clarified that because police “surely cannot be held accountable for the unforeseeable results of their words or actions,” the definition of interrogation encompasses only words or actions by police officers that the officers “*should have known* were reasonably likely to elicit an incriminating response.”<sup>41</sup> The Court also noted that, although the intent of the police is not wholly irrelevant, the legal analysis should focus primarily on the suspect’s perception of the questions.<sup>42</sup>

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inventory the defendant’s personal effects and were not part of an interrogation); *see also* *Nading v. State*, 377 N.E.2d 1345, 1348 (Ind. 1978) (“An interrogation occurs only when officials intend to elicit, by whatever means, substantive evidence concerning criminal activity. Routine administrative questioning concerning an arrestee’s name and address are usually not considered to be part of an ‘interrogation.’”).

38. *See* 446 U.S. 291, 301–02 (1980); Skelton & Connell, *supra* note 2, at 62–63 (discussing the timing of the *Innis* decision, the facts of the case, and the court’s holding).

39. 446 U.S. at 298. In *Innis*, police arrested a suspect in both a murder and robbery investigation, read him his *Miranda* rights, and placed him in a police car. *Id.* at 293–94. On the way to the station, the officers discussed a missing shotgun associated with both crimes the arrestee was suspected of committing. *Id.* at 294. During the conversation, one officer expressed his concern that a student from a nearby school for handicapped children might find the gun and hurt himself. *Id.* at 294–95. *Innis* interrupted the conversation at this point and agreed to show the officers where the shotgun was hidden. *Id.* at 295. After the police reminded *Innis* of his *Miranda* rights, *Innis* led the police to the gun. *Id.* Before his trial for kidnapping, robbery, and murder, *Innis* attempted to suppress both the shotgun and his statements to the officers. *Id.* at 295–96. The judge denied the motion on the grounds that *Innis* had waived his right to remain silent, and the jury convicted *Innis* on all counts. *Id.* at 296. The Rhode Island Supreme Court reversed the conviction, ruling that the police officers’ discussion amounted to an unlawful custodial interrogation under *Miranda* and that *Innis* had not waived his right to counsel. *Id.* The Supreme Court granted certiorari to define “interrogation” as used in *Miranda*. *Id.* at 297.

40. *Id.* at 301. The Court concluded that *Innis* was not “interrogated” as the term was used by the *Miranda* Court. *Id.* at 302. The Court explained that the police did not expressly question *Innis*, and furthermore that the officers should not “have known that their conversation was reasonably likely to elicit an incriminating response.” *Id.* The Court noted that no evidence was offered to suggest that the officers knew that *Innis* was particularly vulnerable to comments about the welfare of handicapped children. *Id.* at 302–03. Similarly, nothing in the record indicated that the police knew that *Innis* was especially disoriented or distressed when they arrested him. *Id.*

41. *Id.* at 302. Several courts have relied on this language to define the scope of the routine booking exception. *See infra* Part I.C.1.

42. *Innis*, 446 U.S. at 301 & n.7. For example, the Court noted that “[a]ny knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of

In 1983, the Court shed light on the types of police questioning that qualify as “normally attendant to arrest and custody” under *Innis*.<sup>43</sup> In *South Dakota v. Neville*, the police arrested a suspect for driving under the influence after he failed a variety of field sobriety tests.<sup>44</sup> The suspect then refused to submit to a blood-alcohol test.<sup>45</sup> The trial court granted his motion to suppress all evidence of his refusal based on his Fifth Amendment privilege against self-incrimination.<sup>46</sup> The Supreme Court reversed, holding that a suspect’s refusal to take a blood-alcohol test, after a lawful request by an officer to submit to the test, does not constitute a coerced act, and is therefore not protected by the Fifth Amendment.<sup>47</sup> The Court explained that such an inquiry instead qualifies as police words or actions “normally attendant to arrest and custody,” as described by the Court in *Innis*.<sup>48</sup> The Court equated the blood-alcohol test request to a police request to submit to fingerprinting, noting that such a request “is highly regulated by state law, and is presented in virtually the same words to all suspects.”<sup>49</sup> Therefore, such an inquiry is not an “interrogation” for purposes of *Miranda*.<sup>50</sup>

### 3. The Supreme Court Recognizes the Existence of the Exception, but Fails to Define its Scope

In 1990, a four-justice plurality directly addressed the routine booking exception in *Pennsylvania v. Muniz*.<sup>51</sup> However, the plurality failed to go so

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persuasion might be an important factor in determining whether the police should have known that their words and actions were reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 301 n.8.

43. *South Dakota v. Neville*, 459 U.S. 553, 564 n.15 (1983) (quoting *Innis*, 446 U.S. at 301).

44. *Id.* at 555.

45. *Id.* at 556.

46. *Id.* Under South Dakota law, “refusal to submit to a blood-alcohol test ‘may be admissible into evidence at the trial.’” *Id.* (quoting S.D. CODIFIED LAWS § 32–23–10.1 (2011)). The South Dakota Supreme Court affirmed the trial court’s suppression of evidence, holding that § 32–23–10.1 violated the defendant’s privilege against self-incrimination. *Id.*

47. *Id.* at 564.

48. *Id.* at 564 n.15 (quoting *Innis*, 446 U.S. at 301).

49. *Id.*

50. *Id.*

51. *Pennsylvania v. Muniz*, 496 U.S. 582, 601–02 (1990) (plurality opinion). Police pulled Muniz over on the suspicion that he was driving under the influence. *Id.* at 585. The officer asked Muniz to complete three routine field sobriety tests, each of which he performed poorly. *Id.* Police arrested Muniz after he admitted to the officer that he had been drinking. *Id.* At the station and before reading Muniz his *Miranda* rights, an officer asked Muniz his name, address, height, weight, eye color, date of birth, current age, and the date of his sixth birthday. *Id.* at 586. The police department videotaped the entire exchange pursuant to the station’s routine practices. *Id.* at 585. Muniz had difficulty stating his address and age and was unable to remember the date of his sixth birthday. *Id.* at 586. After the jury convicted Muniz of driving under the influence, Muniz moved for a new trial, arguing that the trial court erred in admitting his video testimony into evidence on the grounds that it violated his *Miranda* rights. *Id.* at 587. The trial court denied

far as to define the scope of the exception or to announce a clear rule for determining when the exception applies.<sup>52</sup> Justice Brennan, writing for the plurality, merely stated that the routine booking exception “exempts from *Miranda*’s coverage questions to secure the ‘biographical data necessary to complete booking or pretrial services.’”<sup>53</sup> Justice Brennan explained that *Miranda* does not protect inquiries that “appear reasonably related to the police’s administrative concerns.”<sup>54</sup> In a footnote near the end of the opinion, the plurality noted that “[w]ithout obtaining a waiver of the suspect’s *Miranda* rights, the police may not ask questions, even during booking, that are designed to elicit incriminatory admissions.”<sup>55</sup> The plurality ruled that Muniz’s answers to certain biographical questions such as age and address were properly admitted at trial, even in the absence of a *Miranda* warning, because the questioning fell within the routine booking exception.<sup>56</sup>

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the motion, but the Superior Court of Pennsylvania reversed, holding that the trial court should have suppressed the entire audio portion of the tape. *Id.* at 587–88.

52. See Skelton & Connell, *supra* note 2, at 65.

53. *Muniz*, 496 U.S. at 601 (quoting Brief for United States as Amicus Curiae Supporting Petitioner at 12, *Pennsylvania v. Muniz*, 496 U.S. 582 (1990) (No. 89–213)).

54. *Id.* at 601–02.

55. *Id.* at 602 n.14 (quoting Brief for United States as Amicus Curiae Supporting Petitioner, *supra* note 53, at 13). As the Texas Court of Criminal Appeals recently explained, “[t]he meaning of this footnote and how courts are to apply it has been the subject of debate among courts throughout the country.” *Alford v. State*, 358 S.W.3d 647, 655 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012). Several courts have relied on the footnote’s “designed to elicit” language in defining the scope of the routine booking exception. See *infra* Part I.C.2.

56. *Muniz*, 496 U.S. at 601–02. Specifically, the Court explained that Muniz’s answers to the officer’s inquiries as to his name, address, height, weight, eye color, date of birth, and current age should not have been suppressed; they were admissible under the routine booking exception. *Id.* at 601. However, the Court determined that the sixth birthday was testimonial in nature and thus, inadmissible. *Id.* at 600. Therefore, the Court vacated the Pennsylvania Superior Court’s judgment reversing Muniz’s conviction and remanded the case for further proceedings. *Id.* at 605–06. Justice Brennan explicitly stated that the parties had not asked the Court to decide whether the error was harmless, but he noted that the state court could take up the issue on remand. *Id.* at 605 n.22. Chief Justice Rehnquist and Justices White, Blackmun, and Stevens filed an opinion concurring in part, concurring in the result in part, and dissenting in part. *Id.* at 606 (Rehnquist, C.J., concurring in part, concurring in the result in part and dissenting in part). The Justices agreed that Muniz’s answers to the seven biographical questions should not have been suppressed, but in their view, the questions were not testimonial and therefore did not fall within the scope of the privilege against self-incrimination. *Id.* at 608. As such, Chief Justice Rehnquist stated that it was unnecessary to evaluate whether a routine booking exception to *Miranda* applied. *Id.* The concurring and dissenting Justices also posited that the sixth birthday question was similarly non-testimonial and should not have been suppressed. *Id.* at 606–08. Justice Marshall agreed with the plurality that the trial court should have suppressed the sixth birthday question but he strongly objected to the plurality’s recognition of a routine booking exception to *Miranda*. *Id.* at 608 (Marshall, J., concurring in part and dissenting in part).

#### 4. Courts and Commentators Recognize the Possibility of Abuse of the Exception

Soon after the emergence of the routine booking exception, courts recognized the opportunity the exception provides for abuse by law enforcement.<sup>57</sup> As early as the mid-1970s, the Second Circuit noted that an exception for routine booking questions could allow for abuse by police who seek to elicit incriminating information under the guise of a booking question.<sup>58</sup> Thus, courts and commentators alike have suggested imposing various procedural restrictions on the routine booking exception to prevent it from being extended beyond constitutional limits.<sup>59</sup> The two primary proposals are: (1) requiring that qualifying questions be asked at the police station during the actual booking process,<sup>60</sup> and (2) limiting the qualifying questions to those seeking identification or biographical information.<sup>61</sup>

#### C. A Circuit Split Emerges

The Court has not squarely addressed the routine booking exception since the vague plurality opinion in *Muniz*.<sup>62</sup> Courts across the country have “universally accepted” the existence of a routine booking exception to *Miranda*,<sup>63</sup> but they remain “deeply divided” over the exception’s scope.<sup>64</sup> As a result, a circuit split has developed as courts attempt to define the scope of the exception in light of the Supreme Court’s limited pronouncements in *Innis*, *Neville*, and *Muniz*.<sup>65</sup> Three tests for defining the exception’s scope have

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57. See Skelton & Connell, *supra* note 2, at 61–62 (“Even courts that recognized a booking exception to *Miranda* acknowledged that the intent of the police could interfere with the constitutional protections that the Court in *Miranda* intended to provide.”).

58. United States *ex rel.* Hines v. LaVallee, 521 F.2d 1109, 1113 n.2 (2d Cir. 1975); see also United States v. Booth, 669 F.2d 1231, 1238 (9th Cir. 1981) (“[W]e recognize the potential for abuse by law enforcement officers who might, under the guise of seeking ‘objective’ or ‘neutral’ information, deliberately elicit an incriminating statement from a suspect.”).

59. See Skelton & Connell, *supra* note 2, at 57.

60. See *id.* at 95–96; see also United States v. Pacheco-Lopez, 531 F.3d 420, 425 (6th Cir. 2008) (“Extending the exception to the type of questioning here—which occurred in a private home during the investigatory stage of criminal proceedings—would undermine the protections that *Miranda* seeks to afford to criminal suspects.”).

61. See Skelton & Connell, *supra* note 2, at 97–98; see Hughes v. State, 695 A.2d 132, 139 (Md. 1997) (quoting *LaVallee*, 521 F.2d at 1113 & n. 2.) (stating that questions qualifying under the routine booking exception “must be directed toward securing ‘simple identification information of the most basic sort’”).

62. On October 1, 2012, the Supreme Court denied a petition for a writ of certiorari in *Alford v. Texas*, the latest case to address the routine booking exception. 133 S.Ct. 122 (2012); see also *Alford v. Texas*, SCOTUSBLOG, <http://www.scotusblog.com/case-files/cases/alford-v-texas/> (last visited July 19, 2013).

63. See Presely v. City of Benbrook, 4 F.3d 405, 408 n.2 (5th Cir. 1993).

64. Petition for Writ of Certiorari, *supra* note 2, at 9.

65. See *Alford v. State*, 358 S.W.3d 647, 658–59 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012); Petition for Writ of Certiorari, *supra* note 2, at 9–10 (explaining that courts

developed in the courts: a should-have-known test, an intent test, and a legitimate administrative function test.<sup>66</sup>

### 1. *The Should-Have-Known Test*

In attempting to define the scope of the routine booking exception, several federal courts of appeals have applied an objective should-have-known standard.<sup>67</sup> Relying on language the Supreme Court used in *Innis*,<sup>68</sup> the First, Second, and Eighth Circuits have concluded that a *Miranda* warning is required when an officer should have known or expected that a booking question was reasonably likely to elicit an incriminating response.<sup>69</sup> The Sixth and Ninth Circuits have simplified the inquiry slightly, asking only “whether the question is ‘reasonably likely to elicit incriminating’” responses.<sup>70</sup> Several state high courts have also adopted some variation of the should-have-known standard.<sup>71</sup> Regardless of the precise language used to frame the inquiry, courts adopting this objective test “simply [read] out any distinction between

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have taken divergent approaches in determining when the routine booking exception applies); Olsen, *supra* note 15 (noting that the petition for certiorari filed in the *Alford* case indicates a circuit split).

66. Petition for Writ of Certiorari, *supra* note 2, at 9–10.

67. See *Alford*, 358 S.W.3d at 658; Petition for Writ of Certiorari, *supra* note 2, at 10.

68. See *supra* text accompanying notes 38–42 (outlining the relevant facts and legal reasoning involved in *Innis*).

69. See *United States v. Rodriguez*, 356 F.3d 254, 259 (2d Cir. 2004) (finding that a *Miranda* warning was not required when there was nothing to indicate that the questioning agent should have known that incriminating evidence would be elicited from his administrative interview of the suspect); see also *United States v. Reyes*, 225 F.3d 71, 76–77 (1st Cir. 2000) (explaining that “the inquiry into whether the booking exception is thus inapplicable is actually an objective one: whether the questions and circumstances were such that the officer should reasonably have expected the question to elicit an incriminating response”). Similarly, the Eighth Circuit has reaffirmed that questions will only be scrutinized when the government agent should reasonably have known that his or her questions, even though typically administrative in nature, would elicit information “‘directly relevant to the substantive offense charged.’” *United States v. Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996) (quoting *United States v. McLaughlin*, 777 F.2d 388, 392 (8th Cir. 1985)).

70. Petition for Writ of Certiorari, *supra* note 2, at 11 (quoting *United States v. Mata-Abundiz*, 717 F.2d 1277, 1280 (1983)); see also *United States v. Pacheco-Lopez*, 531 F.3d 420, 423–24 (6th Cir. 2008) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)) (explaining that a *Miranda* warning was required when police asked Lopez “where he was from, how he had arrived at the house, and when he had arrived” because these questions are “‘reasonably likely to elicit an incriminating response’”); *Mata-Abundiz*, 717 F.2d at 1280 (stating that “[i]n this case, the questioning conducted by Investigator DeWitt was reasonably likely to elicit an incriminating response from Mata” and therefore constitutes an interrogation).

71. Petition for Writ of Certiorari, *supra* note 2, at 10–11 (citing numerous cases in which state courts applied the should-have-known standard). For example, in *State v. Rossignol*, the Supreme Court of Maine explained that the routine booking exception applies to questions that are administrative in nature and “not likely to elicit an incriminating response.” 627 A.2d 524, 526 (Me. 1993).

the *Muniz*-footnote ‘design’ language and the *Innis* test, applying the latter to all custodial inquiries regardless of their potential administrative function.”<sup>72</sup>

For example, the Ninth Circuit applied the should-have-known test in *United States v. Mata-Abundiz*.<sup>73</sup> Police arrested Mata-Abundiz and charged him with possession of a firearm by an illegal alien.<sup>74</sup> A criminal investigator from the Immigration and Naturalization Service visited Mata-Abundiz in jail and, without advising him of his *Miranda* rights, asked him questions about his immigration status, including his citizenship.<sup>75</sup> Mata’s response that he was a citizen of Mexico was offered as the only evidence of his alienage at trial.<sup>76</sup> His alienage was a fundamental element of the crime that the government needed to prove in order to secure his conviction.<sup>77</sup> On appeal, the government attempted to justify the admission of the statement on the grounds that the questioning qualified under the routine booking exception.<sup>78</sup> The Ninth Circuit stated that the relevant inquiry to determine whether the exception applies is whether, under all of the circumstances, “the questions are reasonably likely to elicit an incriminating response” from the suspect.<sup>79</sup>

The court concluded that the investigator’s inquiry was “highly likely to elicit incriminating information,” especially because it was directly related to an element of the crime that the police had charged Mata-Abundiz with.<sup>80</sup> The court determined that the police should have known the question would elicit an incriminating response from Mata-Abundiz.<sup>81</sup> Thus, the court held that the question was inadmissible in the absence of a *Miranda* warning and accordingly reversed Mata’s conviction.<sup>82</sup>

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72. *Alford*, 358 S.W.3d at 658 (comparing the appellant’s reasoning to differing judicial approaches).

73. 717 F.2d at 1280 (describing the investigator’s questioning as “reasonably likely to elicit an incriminating response”).

74. *Id.* at 1278.

75. *Id.*

76. *Id.* The court admitted the statement over Mata’s objection. *Id.*

77. *Id.* (noting that the only federal charge alleged against Mata was for possession of a firearm by an illegal alien).

78. *Id.* at 1280.

79. *Id.* (citing *United States v. Booth*, 669 F.2d 1231, 1237–38 (9th Cir. 1981)). The *Mata-Abundiz* court noted that, although the subjective intent of the law enforcement officer is relevant to the inquiry, it is not dispositive. *Id.* Moreover, the court also explained that the relationship the questions posed bear to the crime the defendant was suspected of is “highly relevant.” *Id.*

80. *Id.*

81. *Id.*

82. *Id.* (concluding that “in-custody questioning by INS investigators must be preceded by *Miranda* warnings, if the questioning is reasonably likely to elicit an incriminating response”).

## 2. *The Intent Test*

The Fourth, Fifth, Tenth, and Eleventh Circuits, as well as some state high courts, have taken a different approach and adopted a subjective intent test.<sup>83</sup> The intent test requires police to give a *Miranda* warning only if the officer intends his inquiry to elicit incriminating information.<sup>84</sup> Courts applying the intent test generally rely on the language in footnote fourteen of the *Muniz* plurality opinion.<sup>85</sup> These courts interpret the plurality's "designed to elicit" language as meaning that the court should apply the routine booking exception to administrative questions unless the officer subjectively intends to elicit incriminating responses from the suspect.<sup>86</sup>

For example, the United States Court of Appeals for the Fifth Circuit applied the intent test in *United States v. Virgen-Moreno*.<sup>87</sup> In *Virgen-Moreno*, the police arrested Anguiano and others for conspiracy to distribute methamphetamine.<sup>88</sup> Drug Enforcement Agency agents questioned Anguiano prior to reading him his *Miranda* rights, allegedly for the purpose of collecting information to complete a personal background form.<sup>89</sup> At trial, the government admitted portions of the interview into evidence in order to link Anguiano to the alleged conspiracy.<sup>90</sup> On appeal, the government contended that the transcript of the interview was admissible because the questions the

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83. Petition for Writ of Certiorari, *supra* note 2, at 12–13. For example, the Supreme Court of Kentucky applied the intent test in *Dixon v. Commonwealth*, concluding that the question at issue fell within the routine booking exception because the detective did not "deliberately elicit [] incriminating information under the guise of asking a routine booking question." 149 S.W.3d 426, 433 (Ky. 2004). In *State v. Chrisicos*, the Supreme Court of New Hampshire also applied the intent test, holding that the inquiry at issue did not fall within the routine booking exception because it was designed to elicit an incriminating answer from the defendant. See 813 A.2d 513, 516 (N.H. 2002).

84. See *Alford v. State*, 358 S.W.3d 647, 659 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012) (explaining that an officer must have "an interrogative intent" for administrative questioning to fall outside the routine booking exception); Petition for Writ of Certiorari, *supra* note 2, at 12.

85. Petition for Writ of Certiorari, *supra* note 2, at 13 (arguing that most courts that adopt the intent test rely on the *Muniz* decision); see, e.g., *Alford*, 358 S.W.3d at 659. Footnote fourteen states that, "[T]he police may not ask questions, even during booking, that are *designed to elicit* incriminatory admissions." *Pennsylvania v. Muniz*, 496 U.S. 582, 602 n.14 (1990) (plurality opinion) (emphasis added) (quoting Brief for United States as Amicus Curiae Supporting Petitioner, *supra* note 53, at 13).

86. Petition for Writ of Certiorari, *supra* note 2, at 13; see *Alford*, 358 S.W.3d at 659 (noting that many courts narrowly interpret the language in *Muniz* "as precluding only questions that were, in fact, intended to elicit incriminating information").

87. See 265 F.3d 276, 294 (5th Cir. 2001) (holding that the agents' questions were designed or intended to elicit incriminating responses).

88. *Id.* at 283.

89. *Id.* at 293. The agents questioned Anguiano repeatedly about the address on his driver's license, as well as the nature of his association with an address the agents suspected was linked to the conspiracy. *Id.* at 294.

90. *Id.* at 293.

officers posed to Anguiano fell within the routine booking exception to *Miranda*.<sup>91</sup>

The Fifth Circuit, citing *Muniz*, noted that, “questions designed to elicit incriminatory admissions are not covered under the routine booking question exception.”<sup>92</sup> The court concluded that the inquiries at issue were meant to, and in fact did, elicit incriminatory information.<sup>93</sup> Thus, because the officer subjectively intended to elicit incriminating statements, the routine booking exception did not apply and the statements were inadmissible.<sup>94</sup> The Fourth, Tenth, and Eleventh Circuits have also applied (or explicitly expressed support for) the intent test.<sup>95</sup>

### 3. *The Legitimate Administrative Function Test*

The United States Court of Appeals for the District of Columbia Circuit in *United States v. Gaston* created a third test to determine the scope of the routine booking exception: the legitimate administrative function test.<sup>96</sup> Under this approach, a *Miranda* warning is not required for a statement to be admissible at trial if, from an objective standpoint, the inquiry is reasonably related to a legitimate administrative function or concern.<sup>97</sup>

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91. *Id.*

92. *Id.* at 293–94 (citing *Pennsylvania v. Muniz*, 496 U.S. 582, 602 n.14 (1990) (plurality opinion)).

93. *Id.* at 294. Although the Fifth Circuit held that the trial court improperly admitted Anguiano’s statements, it concluded that the error was harmless because the other evidence linking Anguiano to the conspiracy was “overwhelming.” *Id.*

94. *Id.*

95. *See, e.g.*, *United States v. D’Anjou*, 16 F.3d 604, 608 (4th Cir. 1994) (holding that the routine booking exception “does not apply to questions, even during booking, that are designed to elicit incriminatory admissions”) (citing *Muniz*, 496 U.S. at 602 n.14); *United States v. Parra*, 2 F.3d 1058, 1068 (10th Cir. 1993) (explaining that the government agent questioned the defendant for “the direct and admitted purpose of linking [him] to his incriminating immigration file” and thus, the questioning qualified as an interrogation); *see also* *United States v. Sweeting*, 933 F.2d 962, 965 (11th Cir. 1991) (accepting the defendant’s argument that questions intended to elicit incriminating information are inadmissible absent a *Miranda* warning, but noting that the record contained no evidence of such an intent).

96. *See* *United States v. Gaston*, 357 F.3d 77, 82 (D.C. Cir. 2004); *see also* *Petition for Writ of Certiorari*, *supra* note 2, at 14 (noting that the *Gaston* court followed the legitimate administrative function test to determine whether a question fell within the routine booking exception). The Texas Court of Criminal Appeals has also adopted the legitimate administrative function test. *Alford v. State*, 358 S.W.3d 647, 659–60 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012).

97. *See* *Alford*, 358 S.W.3d at 659–60; *Gaston*, 357 F.3d at 82 (quoting *Muniz*, 496 U.S. at 601–02) (referencing language from *Muniz* in support of its determination that questions about the defendant’s address and ownership interest in a house were related to record-keeping concerns and therefore did not require a *Miranda* warning).

In *Gaston*, the defendant made the statements at issue while police executed a search warrant for a firearm at his home.<sup>98</sup> Officers handcuffed Gaston and asked him several biographical questions without advising him of his *Miranda* rights, including where he resided.<sup>99</sup> After Gaston responded that he lived at the address where the police were conducting the search, the officer asked if he owned the house.<sup>100</sup> The government later introduced Gaston's responses at his trial as evidence that he owned the firearm the police found during their search.<sup>101</sup> The D.C. Circuit ruled that the trial court did not err in refusing to suppress the statements because the questioning was permissible under the routine booking exception as part of the police's legitimate administrative function.<sup>102</sup>

In adopting the legitimate administrative function test, the court relied on the plurality's language in *Muniz* and stated that "officers asking routine booking questions 'reasonably related to the police's administrative concerns' are not engaged in interrogation within *Miranda*'s meaning."<sup>103</sup> The Court reasoned that because standard booking inquiries do not constitute a custodial interrogation, the suspect's answers are admissible even absent a *Miranda* warning.<sup>104</sup> The D.C. Circuit therefore interpreted the *Innis* and *Muniz* cases together to create a routine booking exception that is independent of the should-have-known test used by other circuits.<sup>105</sup> Even though the questions asked in *Gaston* were reasonably likely to elicit an incriminating response under *Innis* because Gaston's address was a critical link in his ownership or

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98. *Gaston*, 357 F.3d at 79–80. The magistrate issued the search warrant based on information obtained from a confidential informant. *Id.* at 79. The informant gave the agent "Jimmy's" address and reported seeing a handgun there recently. *Id.* The agent concluded that "Jimmy" was James Gaston, who had been previously convicted of multiple firearm violations. *Id.* at 79–80.

99. *Id.* at 81. The officers also asked Gaston for his name, social security number, and date of birth. *Id.*

100. *Id.* Gaston explained that he co-owned the home with his sisters. *Id.*

101. *Id.* A jury ultimately convicted Gaston of possession of heroin with intent to distribute, possession of a firearm during a drug trafficking offense, and unlawful possession of a firearm by a felon, all of which he appealed. *Id.* at 79.

102. *Id.* at 82. The court explained that the officer's inquiries "dealt as much with record-keeping as the similar booking questions asked in *Muniz*" because pursuant to the Federal Rules of Criminal Procedure, "the 'officer executing the warrant must . . . give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken.'" *Id.* (quoting FED. R. CRIM. P. 41(f)(3)(A) (renumbered as FED. R. CRIM. P. 41(f)(1)(C))). Therefore, the court held that the inquiry regarding homeownership was reasonably related to a legitimate administrative function and thus, fell within the exception to *Miranda*. *See id.*

103. *Id.* (quoting *Pennsylvania v. Muniz*, 496 U.S. 582, 601–02 (1990) (plurality opinion)).

104. *Id.*; Petition for Writ of Certiorari, *supra* note 2, at 14 (explaining that officers need not give *Miranda* warnings when a suspect is not in custody).

105. *Alford v. State*, 358 S.W.3d 647, 658 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012).

possession of the firearm, the court held that the questions' legitimate administrative function exempted them from *Miranda*'s requirements.<sup>106</sup>

Most recently, the Texas Court of Criminal Appeals considered the scope of the routine booking exception in *Alford v. State*.<sup>107</sup> After conducting "one of the most thoughtful examinations of the booking exception in many years,"<sup>108</sup> the court elected to adopt the legitimate administrative function test.<sup>109</sup> The *Alford* court concluded that the legitimate administrative function test provided "a more logical interpretation of the [routine booking] exception" than other tests.<sup>110</sup> The court also noted that the test both encourages administrative efficiency and helps to ensure the safety of police station personnel, other inmates, and the suspect himself.<sup>111</sup>

## II. EVALUATING THE THREE TESTS IN TERMS OF CONSISTENCY WITH PRECEDENT AND ADMINISTRATIVE EFFICIENCY

### A. Analyzing Whether the Three Tests Are Consistent with Precedent

#### 1. Of the Three Tests, the Legitimate Administrative Function Test is the Most Consistent with Supreme Court Precedent

Although the Supreme Court has addressed the routine booking exception in several opinions, the Court has provided very little guidance on the exception's scope.<sup>112</sup> The legitimate administrative function test is most consistent with

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106. *Alford*, 358 S.W.3d at 658–59 (noting that, although questions of an administrative nature may elicit incriminating responses, that alone does not require a *Miranda* warning).

107. *Id.* at 658–60. The police took Alford into custody for evading arrest. *Id.* at 650. After Alford exited the patrol car, an officer recovered a plastic bag of pills and a computer flash drive from under the back seat where Alford had been sitting. *Id.* While searching Alford during booking, the officer asked him if he owned the flash drive found in the car. *Id.* at 650–51. After Alford confirmed that the flash drive was his, the officer catalogued it along with the rest of Alford's personal property. *Id.* at 651. At the time of this questioning, Alford had not yet been read his *Miranda* rights. *Id.* After the lab determined that the pills were ecstasy, a grand jury indicted Alford on an additional charge, possession of a controlled substance. *Id.* Prior to trial, Alford filed a motion to suppress his responses to the officer's questions about the flash drive. *Id.* The court denied the motion and admitted Alford's statements to the officer at trial as evidence of Alford's knowledge and possession of the ecstasy. *Id.* at 651–52. A jury convicted Alford and sentenced him to five years in prison. *Id.* at 652. Both the court of appeals and the Texas Court of Criminal Appeals (the state's highest court for appeals from criminal cases) affirmed Alford's conviction. *Id.* at 652, 662. On October 1, 2012, the U.S. Supreme Court denied Alford's petition for a writ of certiorari. *Alford v. Texas*, *supra* note 62.

108. Brief in Opposition to Petition for Writ of Certiorari, *supra* note 35, at 10.

109. *Alford*, 358 S.W.3d at 659–61.

110. *See id.* at 661. The court rejected Alford's proposed adoption of the should-have-known test, explaining that the test "renders the exception a nullity" and disregards the language used by the Supreme Court in *Innis*. *Id.* at 660.

111. *Id.* at 661.

112. *See Skelton & Connell*, *supra* note 2, at 56.

the Supreme Court's limited pronouncements about the exception in *Innis* and *Muniz*.<sup>113</sup>

In *Innis*, the Court effectively created the routine booking exception by "exclud[ing] from the definition of custodial interrogation questions that are 'normally attendant to arrest and custody.'"<sup>114</sup> According to the legitimate administrative function test, police inquiries qualify under the routine booking exception if they are "reasonably relate[d] to a legitimate administrative concern."<sup>115</sup> The legitimate administrative function test is consistent with *Innis* because a determination of whether a certain question is normally attendant to arrest and custody essentially requires asking whether the question at issue is reasonably related to one of the various administrative tasks that police must complete during the booking process.<sup>116</sup> Booking questions that are reasonably related to a legitimate administrative function are thus, by definition, normally attendant to arrest and custody.<sup>117</sup> Therefore, these questions do not constitute custodial interrogation under *Innis*, even if "police should know that such questions are reasonably likely to elicit incriminating information."<sup>118</sup>

The legitimate administrative function test is also consistent with the holding of *Muniz*.<sup>119</sup> In *Muniz*, a plurality of the Court concluded that "questions appear[ing] reasonably related to the police's administrative concerns . . . fall outside the protections of *Miranda*."<sup>120</sup> On that basis, the Court ruled that the trial court's admission of the suspect's responses to seven standard, biographical questions was proper, even absent a *Miranda* warning.<sup>121</sup> However, the court also ruled that the admission of the suspect's response to an inquiry regarding the date of his sixth birthday was improper.<sup>122</sup> Application of the legitimate administrative function test demonstrates why the first seven questions were permissible, whereas the birth date question was not.<sup>123</sup> Although the *Muniz* Court did not purport to apply a particular test in

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113. See *infra* notes 114–24 and accompanying text.

114. *Alford*, 358 S.W.3d at 660 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

115. *Id.*

116. See *id.* (noting that "routine administrative questions necessary for booking processing do not constitute interrogation, regardless of whether police should know that such questions are reasonably likely to elicit incriminating information").

117. *Innis*, 446 U.S. at 301.

118. See *Alford*, 358 S.W.3d at 660.

119. See *infra* notes 120–24 and accompanying text.

120. *Pennsylvania v. Muniz*, 496 U.S. 582, 601–02 (1990) (plurality opinion).

121. See *id.* at 600–01.

122. *Id.* at 598–600 (characterizing defendant Muniz's response as testimonial, thus requiring a *Miranda* warning).

123. Brief in Opposition to Petition for Writ of Certiorari, *supra* note 35, at 17–18 (quoting *Muniz*, 496 U.S. at 601–02) (noting that the seven biographical questions posed to the suspect "were approved because of the nature of the questions," and that "[t]he 'sixth birthday' question was disapproved because the date of Mr. Muniz's sixth birthday was not a legitimate administrative concern of the jail").

determining which questions were admissible, the application of the legitimate administrative function test is consistent with the plurality's ultimate conclusion.<sup>124</sup>

2. *The Should-Have-Known and Intent Tests are Inconsistent with Precedent*

By contrast, the should-have-known and intent tests are inconsistent with the Court's precedent regarding the routine booking exception.<sup>125</sup> First, as the Texas Court of Criminal Appeals recently argued, the should-have-known test "renders the [routine booking] exception a nullity" by "subject[ing] all custodial questions, 'booking' or otherwise, to the should-have-known test."<sup>126</sup> The same court asked, "[w]hat would be the purpose of asking whether a question is a 'booking question' if, regardless of the answer, admissibility of the response ultimately turns on whether the question was reasonably likely to elicit an incriminating response?"<sup>127</sup> Therefore, arguably, application of the should-have-known test reduces the *Innis* Court's "normally attendant to arrest and custody" language to "meaningless surplusage."<sup>128</sup>

Additionally, the intent test is founded almost entirely on dicta in *Muniz*; specifically, the test is based on a footnote that approvingly quotes an amicus brief.<sup>129</sup> Furthermore, application of the intent test is inconsistent with *Innis*, where the Court explicitly stated that the intent of the officer posing the question, while potentially *relevant*, is not dispositive.<sup>130</sup> Therefore, it seems highly unlikely that the Court intended the scope of the routine booking exception to turn solely on whether the officer intended to elicit incriminating information from the suspect.<sup>131</sup> Furthermore, in several criminal procedure contexts, the Court has expressed an aversion to using subjective standards to determine the intent of the police officer.<sup>132</sup>

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124. *See id.* at 27–29.

125. *See infra* notes 126–32 and accompanying text.

126. *Alford v. State*, 358 S.W.3d 647, 660 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012); *see also* Brief in Opposition to Petition for Writ of Certiorari, *supra* note 35, at 22 ("[The should-have-known test] would make the entire booking exception doctrine a meaningless nullity . . . [it] is the same test that would apply even had the booking doctrine never been adopted.").

127. *Alford*, 358 S.W.3d at 660.

128. *See Velazquez v. Lape*, 622 F. Supp. 2d 23, 33 (S.D.N.Y. 2008) (citing *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

129. *See* Brief in Opposition to Petition for Writ of Certiorari, *supra* note 35, at 26 (citing *Muniz*, 496 U.S. at 602 n.14); *supra* text accompanying notes 85–86.

130. *See Innis*, 446 U.S. at 301 n.7 (clarifying that police intent may play a role in determining whether the police should have known that a question is reasonably likely to elicit an incriminating response).

131. *See id.*

132. *See Missouri v. Seibert*, 542 U.S. 600, 625–26 (2004) (O'Connor, J., dissenting). Justice O'Connor explained that focusing on an officer's subjective intent is "an unattractive proposition that we all but uniformly avoid." *Id.* Courts disfavor inquiries into an officer's intent

In sum, the legitimate administrative function test is most consistent with the Supreme Court's limited precedent on the routine booking exception. In determining which of the three tests to adopt, another factor to consider is the extent to which each test encourages administrative efficiency.

*B. Assessing the Degree of Administrative Efficiency Promoted by Each Test*

*1. The Legitimate Administrative Function Test Encourages Efficiency Both at the Police Station and in Court*

The legitimate administrative function test is not only consistent with Supreme Court precedent,<sup>133</sup> it also improves administrative efficiency by providing law enforcement with a straightforward standard to apply to the questions posed at the station during booking.<sup>134</sup> As the Texas Court of Criminal Appeals recently explained in *Alford v. State*, the test “afford[s] law-enforcement personnel a sphere in which to quickly and consistently administer booking procedures without having to analyze each question to determine if it is likely to elicit an incriminating response.”<sup>135</sup> The efficiency and certainty provided by the legitimate administrative function test renders it particularly valuable in light of the Supreme Court's repeated expression of a preference for providing law enforcement personnel with clear and easy-to-apply tests and standards.<sup>136</sup>

The legitimate administrative function test further promotes administrative efficiency by providing a clear standard for courts to apply to the routine

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largely because of the difficulty of proving subjective motivations. *See, e.g., New York v. Quarles*, 467 U.S. 649, 656 (1984) (explaining that the application of the public safety exception to *Miranda* does not depend on the subjective motives of the officer involved because, among other reasons, these motives will be “largely unverifiable”); *infra* text accompanying notes 142–45. The Court has similarly eschewed subjective standards in the Fourth Amendment context. *See, e.g., Whren v. United States*, 517 U.S. 806, 813 (1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”).

133. *See supra* Part II.A.1.

134. *See Alford v. State*, 358 S.W.3d 647, 661 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012) (noting that the exemption allows for streamlined booking procedures without having to analyze each question for *Miranda* purposes).

135. *Id.*

136. The Supreme Court has often emphasized the importance of providing police with clear standards in the context of both the Fourth and Fifth Amendments. For example, the Court has praised the *Miranda* doctrine for “informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and [for] informing courts under what circumstances statements obtained during such interrogation are not admissible.” *Fare v. Michael C.*, 442 U.S. 707, 718 (1979); *see also Moran v. Burbine*, 475 U.S. 412, 425 (1986) (noting the “ease and clarity” with which the *Miranda* rule can be applied); *Berkemer v. McCarty*, 468 U.S. 420, 430 (1984) (explaining that one of the primary advantages of the *Miranda* doctrine is the clarity that it provides). In the context of the Fourth Amendment, the Court has similarly explained that “[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.” *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979).

booking exception.<sup>137</sup> The test thus provides officers with an unambiguous standard to quickly apply at the scene, *and* also allows a court to easily and objectively verify the officer's application of the test.<sup>138</sup>

## 2. *The Should-Have-Known and Intent Tests Do Not Improve Administrative Efficiency*

By contrast, the should-have-known test and the intent test do not necessarily improve administrative efficiency.<sup>139</sup> The objective should-have-known test is most practical for an *ex post* judicial determination as to the propriety of the questioning in a given situation. However, the test does not provide law enforcement officers with a quick and clear way to determine *at the station* whether the question they wish to ask is permissible absent a *Miranda* warning.<sup>140</sup> The should-have-known test would instead “put the police through [the] gauntlet” by requiring them to perform a fact-specific evaluation of each booking question to determine if the question is likely to elicit incriminating information.<sup>141</sup>

Alternatively, the intent test, as a subjective standard, could prove difficult for courts to apply in practice.<sup>142</sup> Commentators have observed that subjective standards are generally “difficult to abide by [and] hard to administer.”<sup>143</sup> Specifically, courts often disfavor subjective standards because “[j]udicial investigation of police purpose is a frustrating, ordinarily futile endeavor.”<sup>144</sup> Adopting a subjective intent-based test could therefore clog already overburdened dockets instead of clarifying and streamlining the application of the routine booking exception.<sup>145</sup>

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137. See Brief in Opposition to Petition for Writ of Certiorari, *supra* note 35, at 24–25 (arguing that, absent an exemption, police would have to analyze every booking question for compliance with *Miranda*).

138. See *supra* text accompanying notes 134–37.

139. See *infra* text accompanying 140–45.

140. See Brief in Opposition to Petition for Writ of Certiorari, *supra* note 35, at 24–25.

141. *Id.* at 25. The should-have-known test would thus “present[] police with an extraordinary challenge” by requiring them “to filter millions of routine booking questions looking for a question that is ‘directly relevant’ or that goes to an ‘essential element.’” *Id.* at 24.

142. See *infra* notes 143–45 and accompanying text.

143. George E. Dix, *Subjective “Intent” as a Component of Fourth Amendment Reasonableness*, 76 MISS. L.J. 373, 385 (2006).

144. *Id.*; see also *supra* note 132 and accompanying text. In the context of the Fourth Amendment exclusionary rule, Justice White similarly and famously wrote “sending state and federal courts on an expedition into the minds of police officers would produce a grave and fruitless misallocation of judicial resources.” *Massachusetts v. Painten*, 389 U.S. 560, 565 (1968) (White, J., dissenting).

145. For example, problems would arise if different police officers involved in a single interrogation indicated they possessed different states of mind regarding whether the inquiry was intended or designed to elicit incriminating information. See *Missouri v. Seibert*, 542 U.S. 600, 626 (2004) (O’Connor, J., dissenting).

### III. THE LEGITIMATE ADMINISTRATIVE FUNCTION TEST SHOULD BE ADOPTED, BUT PROCEDURAL SAFEGUARDS REMAIN NECESSARY TO PROTECT THE ACCUSED

In its original form, the routine booking exception was narrow and straightforward.<sup>146</sup> Unfortunately, the vague language used in *Innis* and *Muniz* has resulted in confusing and conflicting subsequent decisions on the scope of the exception.<sup>147</sup> Under the legitimate administrative function test, the only analysis required is whether, from an objective standpoint, the booking inquiry is reasonably related to a legitimate administrative function or concern.<sup>148</sup> The legitimate administrative function test should be adopted as it is most consistent with Supreme Court precedent,<sup>149</sup> best promotes administrative efficiency,<sup>150</sup> and will return the booking exception to its foundation as a simple, limited exception to *Miranda* intended only to facilitate police's administrative duties during booking.<sup>151</sup>

Since the exception's initial development, courts have recognized the possibility of its abuse by law enforcement.<sup>152</sup> To minimize the risk of such abuse, courts and commentators alike have suggested imposing certain procedural limitations on the routine booking exception.<sup>153</sup> Although the adoption of the legitimate administrative function test will improve administrative efficiency,<sup>154</sup> it is unlikely to reduce the potential for abuse of

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146. One judge has observed that the routine booking exception's background "reveals that it was a limited exception created to facilitate the administrative duties of the police at the station house." *Jones v. United States*, 779 A.2d 277, 290 (D.C. 2001) (Mack, J., dissenting).

147. See *Alford v. State*, 358 S.W.3d 647, 656 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012); Petition for Writ of Certiorari, *supra* note 2, at 9 ("Courts have adopted varying and inconsistent tests to determine whether a particular question falls within the routine booking exception."); Skelton & Connell, *supra* note 2, at 74 (noting the existence of "confusion in the lower courts" over when the exception applies).

148. See *Alford*, 358 S.W.3d at 659–60; Petition for Writ of Certiorari, *supra* note 2, at 14.

149. See *supra* Part II.A.

150. See *supra* Part II.B.

151. See *supra* Part I.B.

152. See *supra* Part I.B.4.

153. For example, Megan Skelton and James Connell have suggested that courts should restrict qualifying inquiries to those the police ask at the station during the actual booking process and those seeking identification or biographical information. Skelton & Connell, *supra* note 2, at 95–96. Similarly, judges have argued that questions qualifying under the routine booking exception "must be directed toward securing 'simple identification information of the most basic sort.'" *Hughes v. State*, 695 A.2d 132, 139 (Md. 1997) (quoting *United States ex rel. Hines v. LaVallee*, 521 F.2d 1109, 1113 n.2. (2d Cir. 1975)). Some judges have alternatively expressed support for the notion that the routine booking exception should only apply to questions seeking information the police need to complete booking paperwork or to comply with other mandatory booking procedures. See, e.g., *United States v. Guess*, 756 F. Supp. 2d 730, 741 (E.D. Va. 2010), *cert. denied*, 184 L. Ed. 2d 667 (2013).

154. See *supra* Part II.B.

the exception.<sup>155</sup> Therefore, additional safeguards are necessary to protect the rights of the accused. The routine booking exception should be interpreted to require that questions falling within the exception must not only be reasonably related to a legitimate administrative function, but also must be asked at the station during the actual booking process,<sup>156</sup> and must seek to elicit only the information (whether strictly biographical in nature or not) necessary for police to complete any booking paperwork.<sup>157</sup>

*A. The Inquiry Must be Posed at the Station During Booking*

The routine booking exception should require law enforcement to pose questions to the suspect at the police station during the actual booking process.<sup>158</sup> Although such a requirement may seem obvious or trivial, courts often admit suspects' answers to booking-type questions posed outside of the station into evidence.<sup>159</sup> For example, the D.C. Circuit in *United States v. Gaston* declined to suppress a suspect's response to an officer's inquiry posed in the suspect's home, while the suspect was handcuffed.<sup>160</sup> Applying the legitimate administrative function test, the court concluded that the questioning satisfied the routine booking exception and that the trial court properly admitted the suspect's statements into evidence.<sup>161</sup> *Gaston* offers a clear example of the potential for continuing abuse of the exception even after adoption of the legitimate administrative test, and thus the need for additional procedural safeguards.

Restricting the routine booking exception to inquiries posed at the station during the booking process gives courts "a fundamentally clear-cut way" to determine whether an alleged routine booking question was in fact proper.<sup>162</sup> The "bright line" established by such a limitation will serve to "[shed] light on whether the police were acting with an investigatory purpose," or merely fulfilling their administrative duties.<sup>163</sup>

*B. The Inquiry Must Seek Only the Information Necessary to Complete Booking Paperwork*

Additionally, courts and commentators have suggested limiting qualifying inquiries to those seeking "basic identification information" such as name, date

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155. See *infra* text accompanying notes 159–61.

156. See *infra* Part III.A.

157. See *infra* Part III.B.

158. Skelton & Connell, *supra* note 2, at 95.

159. *Id.* at 95–96 (citing *State v. Smith*, 785 So. 2d 815, 817–18 (La. 2001); *United States v. Edwards*, 885 F.2d 377, 385 (7th Cir. 1989)).

160. 357 F.3d 77, 82 (D.C. Cir. 2004); see *supra* text accompanying notes 99–102.

161. *Gaston*, 357 F.3d at 82; see *supra* text accompanying notes 103–06.

162. Skelton & Connell, *supra* note 2, at 97.

163. *Id.*

of birth, address, height, and weight.<sup>164</sup> However, strict adherence to such a requirement could render the routine booking exception underinclusive. For example, one can imagine a situation in which a police officer asks a suspect a question that, although not explicitly biographical in nature, is still “necessary to complete booking or pretrial services.”<sup>165</sup>

*Alford v. State* dealt with such a situation.<sup>166</sup> In *Alford*, while searching a suspect during booking, an officer asked the suspect if he owned a flash drive the police discovered in the police car that the suspect had been transported to the station in.<sup>167</sup> After the suspect confirmed that the flash drive was his, the officer cataloged it along with the rest of the suspect’s personal property.<sup>168</sup> At the time of questioning, the police had not read the suspect his *Miranda* rights.<sup>169</sup> The Texas Court of Criminal Appeals applied the legitimate administrative function test and ruled that the officer’s question was exempt from the *Miranda* requirements under the routine booking exception.<sup>170</sup> However, had the court strictly restricted the exemption to inquiries seeking biographical data, the court would have suppressed the suspect’s response, despite the question’s direct relation to a legitimate administrative concern.<sup>171</sup>

Instead, courts should adopt a slightly broader version of this restriction, limiting questions qualifying under the routine booking exception to those seeking information that the police need to complete booking paperwork.<sup>172</sup>

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164. *Id.* at 97–98; *see also* United States *ex rel.* Hines v. LaVallee, 521 F.2d 1109, 1113 n.2. (2d Cir. 1975) (explaining that the exception should be limited to “simple identification information of the most basic sort”).

165. *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990) (plurality opinion) (quoting Brief for United States as Amicus Curiae Supporting Petitioner, *supra* note 53, at 12).

166. *See infra* notes 168–71 and accompanying text.

167. *Alford v. State*, 358 S.W.3d 647, 650–51 (Tex. Crim. App. 2012), *cert. denied*, 133 S.Ct. 122 (2012). *Alford* was originally arrested for evading arrest. *Id.* at 650. In addition to the flash drive, a plastic bag of ecstasy was also found in the police car. *Id.* at 650–51. *Alford* was subsequently indicted on an additional charge, possession of a controlled substance, and the court allowed the state to introduce statements regarding the flash drive at trial. *Id.* at 651–52.

168. *Id.* at 651.

169. *Id.* at 650–51.

170. *Id.* at 662. The court noted that the state “has a legitimate interest in identification and storage of an inmate’s property,” and that the officer’s question was reasonably related to this administrative concern. *Id.* at 661–62.

171. *See Skelton & Connell*, *supra* note 2, at 97–98.

172. *See* United States v. Pacheco-Lopez, 531 F.3d 420, 425 (6th Cir. 2008) (concluding that the routine booking exception should not apply because, among other reasons, the questioning at issue did not involve any “active documentation” of the suspect’s responses, such as the completion of booking paperwork); *see also* United States v. Guess, 756 F. Supp. 2d 730, 741 (E.D. Va. 2010) (stating that the routine booking exception generally applies to information needed by police to complete booking paperwork or to comply with other mandatory booking procedures), *cert. denied*, 184 L. Ed. 2d 667 (2013); *see also* *People v. Rodney*, 85 648 N.E.2d 471, 474 (N.Y. 1995) (holding that the suspect’s answer to the officer’s inquiry as to his employment status fell within the exception because, among other reasons, the question was “part of a routine booking form”).

Generally, completing booking paperwork requires police to obtain biographical information such as the arrestee's name, date of birth, and address.<sup>173</sup> However, in some jurisdictions the booking paperwork may require police to obtain additional information that is not strictly biographical in nature, such as an inventory of the arrestee's property, as in *Alford*,<sup>174</sup> or an emergency contact for the arrestee.<sup>175</sup> Under the legitimate administrative function test, such information would be "reasonably relate[d] to a legitimate administrative concern" of the jail, and thus admissible absent a *Miranda* warning.<sup>176</sup> This slightly more lenient limitation would allow courts to admit suspects' answers to these legitimate (but non-biographical) questions, while simultaneously minimizing the possibility of abuse of the exception by providing police and courts with a clear basis for determining when a *Miranda* warning is necessary prior to questioning.<sup>177</sup> In sum, questions must be reasonably related to a legitimate administrative function, must be asked at the station during the actual booking process, and must seek only the information necessary for police to complete any booking paperwork to qualify under the routine booking exception.

#### IV. CONCLUSION

It is clear that courts, attorneys, law enforcement officers, and suspects need clarification on the scope of the routine booking exception to *Miranda*. The legitimate administrative function test will provide the necessary clarity in determining whether police must issue a *Miranda* warning prior to a routine booking inquiry. This test is most consistent with previous statements by the Supreme Court on the routine booking exception, best promotes administrative efficiency at stationhouses and in courts, and most closely reflects the routine booking exception as originally conceived. However, because of the risk of abuse by law enforcement of the routine booking exception, additional procedural safeguards are necessary to ensure that the rights of the accused are fully protected.

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173. See *supra* note 3 and accompanying text.

174. See *Alford*, 358 S.W.3d at 661 (quoting 37 TEX. ADMIN. CODE § 265.4(a)(11) (2008)) ("[T]he Texas Administrative Code requires that '[u]pon intake, a file on each inmate shall be established,' which 'shall include inmate property inventory.'").

175. See, e.g., 37 TEX. ADMIN. CODE § 265.4(a)(13) (requiring police to obtain upon intake the "name, address, and phone number of person to be contacted in event of emergency").

176. See *Alford*, 358 S.W.3d at 660.

177. See *supra* Part III.

