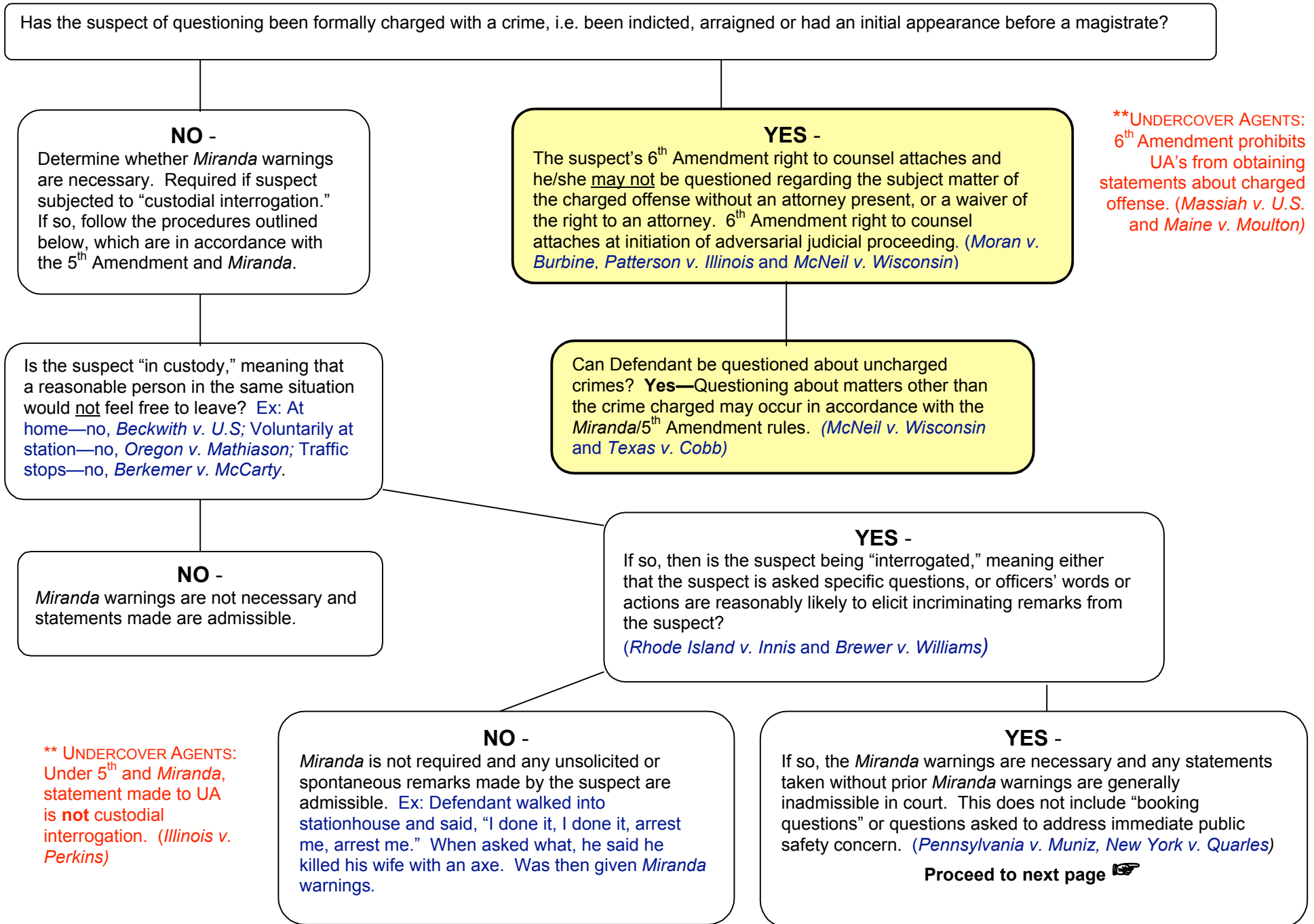


## Guide to Interrogation and Confessions



**\*\*UNDERCOVER AGENTS: 6<sup>th</sup> Amendment prohibits UA’s from obtaining statements about charged offense. (*Massiah v. U.S. and Maine v. Moulton*)**

Note: Rights may only be invoked by suspect, not by counsel or any other third party. (*Moran v. Burbine*)

If *Miranda* warnings are required and have been given, may questioning take place?

**NO -**

If suspect invokes the **right to remain silent**, questioning must cease.

**NO -**

If suspect invokes the **right to have an attorney present**, all questioning must stop until the suspect is provided with an attorney. While it is not absolutely required, it is strongly recommended that you clarify an ambiguous request. (*Edwards v. Arizona*) Must allow attorney to be present during questioning, mere consultation insufficient. (*Minnick v. Mississippi*)

**YES -**

If suspect waives his or her rights under *Miranda*. Must be an “intentional relinquishment or abandonment of a known right or privilege.” (*Johnson v. Zerbst*)

Note: Rights invoked under *Miranda* continue so long as suspect is in continuous custody.

If questioning must stop, may it be reinitiated?

**By Suspect:**  
**YES -**

Regardless of which right was invoked. If right to counsel invoked, it must be fairly clear that the suspect reinitiated, and waiver must still be knowing and voluntary. (*Oregon v. Bradshaw*)

**By Officer:**  
**YES -**

If the suspect has invoked only the right to remain silent **and**: 1) there has been intervening time (courts have found several hours to be sufficient) between the first attempt to question and the second attempt, 2) the suspect is re-Mirandized, **and** 3) the suspect knowingly and voluntarily waives his or her rights. (*Michigan v. Mosely*)

**By Officer:**  
**NO -**

If the suspect has invoked the right to counsel. Not even for a different crime. Continues for duration of custody. (*Arizona v. Roberson*)

**Finally**—assuming the suspect/defendant gives a statement obtained in accordance with all of the foregoing restrictions, that statement must be **voluntary**. Involuntary statements are inadmissible. This analysis is largely based upon whether there was “police coercion.” Consider education, language barriers, mental ability, age, intoxication, familiarity with legal system, length of detention, deprivation of sleep/food/water/restroom, promises or threats, etc. (*See Colorado v. Connelly; Fare v. Michael C.; Mincey v. Arizona; and, Ashcraft v. Tennessee*) Whether *Miranda* warnings were given is also a factor to consider.

\*Remember, when a suspect invokes any right under *Miranda*, that right must be “scrupulously honored.”