No. 21-499

In the Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERENCE B. TEKOH,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF ARIZONA, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, GEORGIA, IDAHO, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

In its decision below, the Ninth Circuit held erroneously, and in conflict with other circuit courts, that an officer's failure to provide a suspect with the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966), can give rise to liability under 42 U.S.C. § 1983. Because that decision frustrates their sovereign and proprietary interests, the States and Territories of Arizona, the Northern Mariana Islands, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, Texas, Utah, and West Virginia ("Amici States") submit this *amici curiae* brief in support of Petitioner, Deputy Carlos Vega.[1]

Amici States have two primary interests implicated by this case. First, the question presented directly impacts the States' law enforcement agencies whose sworn officers investigate tens of thousands of crimes every year. Amici States' officers are routinely named defendants in suits brought under Section 1983. The Ninth Circuit's conclusion that evidentiary decisions made by a prosecutor and judge in a criminal prosecution can expose a police officer to civil liability will have a chilling effect on an officer's ability to investigate crime effectively. And valuable state resources will inevitably be expended to litigate claims premised on the Ninth Circuit's unwarranted expansion of the scope of liability under Section 1983.

Second, this case impacts Amici States' "broad latitude under the Constitution to establish rules

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[1] Counsel of record for all parties received timely notice of Amici States' intent to file this brief on October 17, 2021. *See* Sup. Ct. R. 37.2(a).

excluding evidence from criminal trials[,]" *United States v. Scheffer*, 523 U.S. 303, 308 (1998), which furthers Amici States' interest in maintaining society's "high degree of confidence in its criminal trials," *Herrera v. Collins*, 506 U.S. 390, 420 (1993) (O'Connor, J., concurring). As Vega's Petition explains (at 20-28), *Miranda*'s prophylactic rule exists to safeguard a criminal defendant's Fifth Amendment right against self-incrimination in a criminal trial. The Ninth Circuit's holding impermissibly encroaches on Amici States' prerogative to decide how to best deter illegal police conduct. When a *Miranda* violation occurs, a criminal defendant is entitled to an appropriate remedy through state-created rules of evidence, not the threat of federal civil liability.

SUMMARY OF ARGUMENT

Law enforcement officers operate "in the midst and haste of a criminal investigation," *United States v. Ventresca*, 380 U.S. 102, 108 (1965), and questioning suspects is one of police's most critical functions. Officers must be able to make judgment calls in the field without fear that they could face a lawsuit under Section 1983 if they fail to provide in-custody suspects with *Miranda* warnings and fail to anticipate that prosecutors and judges would erroneously allow unwarned statements into evidence during a criminal proceeding. As the Petition emphasizes (at 30), whether a police encounter with a suspect is the equivalent of a custodial interrogation—which triggers *Miranda* warnings—is a highly fact-intensive, murky analysis that even courts have struggled to apply. *See, e.g., Howes v. Fields*, 565 U.S. 499, 505–09 (2012) (rejecting a categorical rule to define *Miranda* custody and articulating a multi-factor test).

Yet the Ninth Circuit's decision below expects officers to be legal technicians, exposing them to civil liability absent any nexus between the officer's conduct and a prosecutor's and judge's decision to allow a *Miranda*-violative statement into evidence at a criminal trial. Amici States agree with Petitioner and the dissenters below that the Ninth Circuit's decision is fundamentally unsound. Allowing law enforcement officers to be sued under Section 1983 for *Miranda* violations finds no support in the text of Section 1983 or this Court's precedent. And suppression of a statement obtained not in compliance with *Miranda* is sufficient deterrence against actual violations of the Fifth Amendment. The Ninth Circuit's decision below, however, threatens over-deterrence based upon violations of mere prophylactics, which may frequently be unmoored from any actual constitutional violation.

Whether a law enforcement officer can be subjected to a civil suit based on a *Miranda* violation should not depend on the happenstance of geography. This Court should settle the clear circuit split by granting Vega's petition and holding that a violation of *Miranda*'s prophylactic rule governing the admissibility of evidence cannot support a cause of action under Section 1983.

ARGUMENT

I. The Circuits Are Hopelessly Split On The Question Presented

The Petition well explains that there is an entrenched and intractable circuit split on the question presented. Respondent appears to have conceded the conflict among the circuits. *Id.* at 19.

The Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits have held that a prosecution's use of unwarned statements in a criminal proceeding does not give rise to a suit for damages against a police officer under Section 1983. Pet. at 15-19. In contrast, the Ninth and Seventh Circuits have held that an officer who takes an un-*Mirandized*, self-incriminating statement is exposed to civil liability if those statements are introduced at a criminal trial. *Id*. at 13-14. And the Third and Fourth Circuits have strongly indicated that they would likewise find that a plaintiff can state a claim under Section 1983 if unwarned statements were used against the plaintiff at trial. *Id*. at 15.

In each of the decisions in the Fifth, Sixth, Eighth, and Tenth Circuits, the unwarned statement at issue was introduced into evidence at the criminal suspect's trial. *See Hannon v. Sanner*, 441 F.3d 635, 635–36 (8th Cir. 2006); *Murray v. Earle*, 405 F.3d 278, 293 (5th Cir. 2005); *McKinley v. City of Mansfield*, 404 F.3d 418, 432 & n.13 (6th Cir. 2005); *Bennett v. Passic*, 545 F.2d 1260, 1263 (10th Cir. 1976). In *Jones v. Cannon*, the Eleventh Circuit relied on the Tenth Circuit's decision in *Bennett* to reject a Section 1983 claim where an unwarned confession was used in a grand jury proceeding to obtain an indictment. 174 F.3d 1271, 1290–91 (11th Cir. 1999).

These circuits decided that an officer's failure to provide *Miranda* warnings does not state a claim under Section 1983, albeit for slightly different reasons—all of which are correct in Amici States' view. The decisions of the Eighth, Tenth, and Eleventh Circuits reasoned that although *Miranda*'s rule exists to protect a suspect's Fifth Amendment rights, a mere violation of *Miranda* does not describe

a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" under Section 1983. *See Hannon*, 441 F.3d at 638 ("The admission of Hannon's statements in a criminal case did not cause a deprivation of any 'right' secured by the Constitution, within the meaning of 42 U.S.C. § 1983."); *Bennett*, 545 F.2d at 1263 (reasoning, "[t]he Constitution and laws of the United States do not guarantee Bennett the right to *Miranda* warnings[,]" and no "rational argument can be made in support of [a] civil rights claim for damages"); *Jones*, 174 F.3d at 1290–91 (adopting and quoting Tenth Circuit's decision in *Bennett*, 545 F.2d at 1263).

The Sixth Circuit stated that a Section 1983 action based on a failure to read *Miranda* warnings "is squarely foreclosed by" this Court's plurality decision in *Chavez v. Martinez*, 538 U.S. 760, 772 (2003). *McKinley*, 404 F.3d at 432 & n.13. And the Fifth Circuit's rationale for rejecting Section 1983 liability under these circumstances was premised on a proximate cause analysis that is directly contrary to the Ninth Circuit's holding below. *Murray*, 405 F.3d at 293 (holding the trial court's decision to admit the unwarned confession into evidence "constituted a superseding cause of [plaintiff's] injury, relieving the defendants of liability under § 1983").

In contrast to these decisions, the Seventh Circuit held 15 years ago that an officer's failure to provide a *Miranda* warning can create a cause of action under Section 1983 when a defendant's unwarned statements were used at a preliminary probable-cause hearing. *Sornberger v. City of Knoxville, Ill.*, 434 F.3d 1006, 1026–27 (7th Cir. 2006). Similarly, the Third and Fourth Circuits have strongly signaled that they would find a Section 1983 action appropriate

whenever unwarned statements are used against a Section 1983 plaintiff at a criminal trial. *See Burrell v. Virginia*, 395 F.3d 508, 514 (4th Cir. 2005); *Renda v. King*, 347 F.3d 550, 559 (3d Cir. 2003).

The Ninth Circuit endorsed the view of the Third, Fourth, and Seventh Circuits, holding that "in light of the Supreme Court's decision in *Dickerson v. United States*, 530 U.S. 428 [] (2000) … we conclude that where the un-*Mirandized* statement has been used against the defendant in the prosecution's case in chief in a prior criminal proceeding, the defendant has been deprived of his Fifth Amendment right against self-incrimination, and he may assert a claim against the state official who deprived him of that right under § 1983." App.2a. As Judge Bumatay rightly emphasized below, in dissenting from the denial of rehearing, the Ninth Circuit's decision is "at direct odds" with decisions of other circuits. App.81a.

The debate among the circuits reinforces that this Court's intervention is necessary to settle the conflict. The Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits agree that the scope of Section 1983 does not encompass *Miranda* violations, but they have reached this conclusion for varying reasons. The Sixth Circuit, for example, interpreted this Court's fractured decision in *Chavez* as foreclosing that result. *McKinley*, 404 F.3d at 432 & n.13. But the Seventh Circuit took a diametrically opposite view of *Chavez*. *See Sornberger*, 434 F.3d at 1024–26. The Ninth Circuit has now expressly "reject[ed] the Eighth Circuit's approach in *Hannon*" and insisted its conclusion is consistent with *Dickerson* and *Chavez*, App.19a-20a, App.77a.

The Ninth Circuit's decision deepens the circuit conflict—making the question presented ripe for this Court's review. And now that *nine* circuits have weighed in on the question presented, there is little marginal value to be had from further percolation. Only this Court can provide law enforcement officers with needed clarity about whether a *Miranda* violation exposes them to Section 1983 liability.

II. The Ninth Circuit's Decision Is Incorrect

As the Petition explains (at 20), the Ninth Circuit's decision is wrong for two distinct reasons. *First*, the Ninth Circuit incorrectly held that *Miranda* established "a constitutional right related to police conduct, rather than a prophylactic constitutional rule designed to protect the Fifth Amendment right against self-incrimination during a criminal trial." Pet. at 20. *Second*, the Ninth Circuit's causation analysis under Section 1983 is untenable. *Id.*

A. Other Circuits Have Correctly Held That *Miranda* Is Not Enforceable By Section 1983 Suit For Damages

Section 1983 authorizes suit against "[e]very person who, under color of any statute … of any State … subjects, or causes to be subjected, any citizen … to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

As the Petition explains (at 20-21), the constitutional "right" at issue here is the Fifth

Amendment's Self-Incrimination Clause, which preserves a "fundamental trial right of criminal defendants." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990); *see also* U.S. Const. amend. V ("No person … shall be compelled in any criminal case to be a witness against himself."). This Court's landmark *Miranda* decision established a judicially-created rule for "determining the admissibility of suspects' incriminating statements." *Dickerson*, 530 U.S. at 434; *see also Miranda*, 384 U.S. at 479. *Miranda* warnings are often described "colloquially as '*Miranda* rights.'" *Dickerson*, 530 U.S. at 435. This Court, however, has expressly stated that the warnings are "not themselves rights protected by the Constitution but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected." *New York v. Quarles*, 467 U.S. 649, 654 (1984); *see also United States v. Patane*, 542 U.S. 630, 636, 639 (2004) (plurality opinion) (reiterating the "prophylactic" nature of *Miranda*).

Thus, as Judge Bumatay correctly reasoned in his dissent below, "*Miranda* warnings are neither 'rights, privileges, or immunities' under the Constitution; so a violation of *Miranda* alone cannot sustain money damages under § 1983." App.89a (quoting 42 U.S.C. § 1983). This conclusion is compelled "by the plain terms of the *Miranda* decision and at least 21" decisions of this Court. *Id.*; *see also* Pet. at 26-27.

As the Petition argues (at 24-25), the Ninth Circuit's contrary conclusion is based on a misreading of *Dickerson*. There, this Court simply "maintain[ed] the *status quo* of the *Miranda* doctrine," *Hannon*, 441 F.3d at 637, while holding that Congress "may not legislatively supersede" the Court's constitutional decisions, *Dickerson*, 530 U.S. at 437. As the Fifth

Circuit put it, "the decision in *Dickerson* did not undermine the continuing validity of the Court's precedent that the *Miranda* procedural safeguards are 'not themselves rights protected by the Constitution'" but instead exist to protect the Fifth Amendment right against compulsory self-incrimination. *Hannon*, 441 F.3d at 637 (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)). Thus, "the best reading of *Dickerson* is that it does not undermine the long line of cases characterizing *Miranda* as a prophylactic rule and not a 'constitutional right.'" App.91a (Bumatay, J., dissenting).

The Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits have correctly held that a prosecution's use of unwarned statements in a criminal proceeding does not give rise to a suit for damages against a law enforcement officer under Section 1983. But once again, the Ninth Circuit "is out of step with Supreme Court precedent and the vast majority of circuit courts around the country," this time by "elevating *Miranda* warnings to the level of a constitutional right." App.96a (Bumatay, J., dissenting). This Court should grant the Petition to reaffirm that *Miranda* is a prophylactic rule and that a *Miranda* violation, standing alone, is insufficient to state a claim under Section 1983 for damages.

B. The Ninth Circuit's Causation Chain Is Untenable

The Ninth Circuit also erred when it found that Deputy Vega proximately caused the improper admission of Tekoh's unwarned statements at his criminal trial. *See* Pet. at 28. It is well-established that Section 1983 requires causation. *See* 42 U.S.C.

§ 1983 (authorizing suit against a person who "*subjects*, or *causes to be subjected*, any citizen of the United States … to the deprivation of any rights, privileges, or immunities, secured by the Constitution") (emphasis added); *see also Malley v. Briggs*, 475 U.S. 335, 344 n.7 (1986) (Section 1983 requires "the same causal link" required by common law principles).

The Ninth Circuit decided "[t]here is no question that Deputy Vega 'caused' the introduction of the statements at Tekoh's criminal trial even though [Deputy] Vega himself was not the prosecutor." App.21a. This conclusion is erroneous; as the Petition argues (at 28-31), a law enforcement officer does not proximately cause an improper admission of statements that violate *Miranda* at a criminal trial. An officer has no control over whether a statement is admitted into evidence; for that to occur, both a prosecutor must offer the statement and *a judge* must admit it, likely over a *Miranda* objection. And the Section 1983 plaintiff's *Miranda* rights could only be violated if the trial judge errs in admitting the statement, which may in fact have been offered into evidence over the officer's explicit objection.

The causal chain thus runs not only through two other independent actors, but through prosecutorial actions that generally receive absolute prosecutorial immunity, *see Imbler v. Pachtman*, 424 U.S. 409, 420 (1976), as well as judicial decision-making entitled to judicial immunity, *see Stump v. Sparkman*, 435 U.S. 349, 359 (1978). That is far too attenuated to permit liability. *Cf. Utah v. Strieff*, 579 U.S. 232 (2016) (holding officer's seizure of evidence during a search incident to arrest based on discovery of a valid arrest warrant "attenuated the connection between the

[officer's] unlawful stop and the evidence seized"). Indeed, it could result in liability without fault since the officer may never have intended for the statement to be offered into evidence.

Amici States agree with the Petition (at 29) that officers are entitled to presume that a prosecutor would decline to introduce *Miranda*-violative statements and/or that a judge would exclude such evidence. Law enforcement officers should not be held responsible for the failures of prosecutors or judges. Nor should they be left holding the bag for decisions of other actors enjoying absolute immunity.

In the analogous context of determining whether exclusion of evidence is appropriate for a constitutional violation, this Court's precedent repeatedly recognizes that officers are entitled to reasonably rely on conduct of other actors. *See Davis v. United States*, 564 U.S. 229, 241 (2011) (refusing to penalize officers for appellate judges' errors and stating that "well-trained officers" may rely on binding appellate precedent authorizing a police practice "to fulfill their crime-detection and public-safety responsibilities"); *Illinois v. Krull*, 480 U.S. 340, 349–50 (1987) ("Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law."); *United States v. Leon*, 468 U.S. 897, 921 (1984) (refusing to "[p]enaliz[e] the officer for the magistrate's error" except in limited circumstances). The same result should obtain here.

The Ninth Circuit's decision endorses the opposite principle—sending a message to law enforcement that if errors well beyond the officers' control occur in criminal proceedings, officers may be penalized for the

errors of others. Courts should not "require police to have a crystal ball in determining what courts may conclude in future cases[.]" *State v. Weakland*, 434 P.3d 578, 581, ¶ 8 (Ariz. 2019) (cleaned up). This Court should grant the Petition to correct the Ninth Circuit's flawed causation analysis. Instead, the Court should adopt the Fifth Circuit's contrary holding that a trial court's ruling finding an unwarned statement admissible is a superseding cause of a plaintiff's injury, and therefore, relieves law enforcement officers of liability under Section 1983. *See Murray*, 405 F.3d at 293.

III. Granting Review Would Permit This Court To Provide Much Needed Clarification About *Miranda*'s Doctrinal Underpinnings

Finally, this case merits review for the Court to clarify its precedent. The entrenched circuit split confirms that the Court's jurisprudence on *Miranda* and whether it is a prophylactic rule or a freestanding constitutional mandate is confusing. *See Dickerson*, 530 U.S. at 445–57 (Scalia, J., dissenting) (highlighting the confusion and the Court's conflicting statements in various cases characterizing the nature of *Miranda*'s rule). The fractured decisions in *Chavez* and *Patane* further contribute to this confusion. *See* App.13a-14a (majority opinion explaining that *Patane* and *Chavez* muddied the proper characterization of *Miranda* warnings).

Amici States agree that this is case is an ideal vehicle to resolve these issues because this case is not intertwined with any alleged violation of the Fourteenth Amendment's prohibition against admission of involuntary confessions. *See Dickerson*,

530 U.S. at 444 (making clear the requirement that *Miranda* warnings be given and voluntariness inquiry are separate issues). Granting review would provide an opportunity for this Court to clarify the doctrinal basis of *Miranda*—which the Court decided over 50 years ago. A half-century is too long for the Court to leave this critically important issue in criminal jurisprudence unanswered.

CONCLUSION

The Petition for a writ of certiorari should be granted.

November 3, 2021

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