No. 21-499

In the Supreme Court of the United States

CARLOS VEGA,
Petitioner,

v.

TERENCE B. TEKOH,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This case satisfies the traditional criteria for certiorari: There is a square and acknowledged circuit split on an important and oft-recurring question of federal law; the decision below is wrong; and this is an ideal vehicle for resolving the split. Tekoh's responses lack merit.

On the circuit split, Tekoh concedes that the courts of appeals are divided, and instead downplays the size and importance of the conflict. But the acknowledged conflict alone warrants certiorari. Moreover, in attempting to whittle down the division, Tekoh misstates the facts and holdings of key cases, and ignores the extent to which the question presented is frequently litigated in federal courts around the country. The split is entrenched and important—and should be resolved.

On the merits, Tekoh centers his opposition on *Dickerson v. United States*, 530 U.S. 428 (2000). But while *Dickerson* observed that *Miranda* is a "constitutional rule," it noted that *Miranda* warnings are not themselves "'rights protected by the Constitution.'" *Id.* at 437-38 (citation omitted). This case is about whether the prophylactic rule confirmed in *Dickerson* as a constitutional shield for criminal defendants may be converted into a sword against law-enforcement officers for money damages—an issue *Dickerson* did not consider. The Ninth Circuit erred when it held that a Section 1983 plaintiff may obtain money damages from a police officer who takes un-*Mirandized* statements that are ultimately admitted in a criminal case.

This Court should grant certiorari.

ARGUMENT

I. The Circuit Split Is Acknowledged, Deep, And Entrenched

Tekoh concedes (at 7-11) that the decision below conflicts with decisions of the Eighth and Tenth Circuits. Even that conflict warrants review. But the conflict is far more entrenched. The Ninth Circuit's decision deepens a 5-4 split: In the Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits, Tekoh's Section 1983 claim would fail as a matter of law, but in the Third, Fourth, Seventh, and Ninth Circuits, an officer may face liability under Section 1983 in the same circumstances. *See* Pet. 12-19. Tekoh's various efforts to downplay the split all fail.

1. *Circuits allowing Section 1983 liability based on* Miranda *violations.* Tekoh acknowledges that the Seventh and Ninth Circuits permit Section 1983 claims against law-enforcement officers based on the introduction of un-*Mirandized* statements at a defendant's criminal trial. Pet. 13-15; Opp. 2, 7. Those circuits have undisputedly resolved the question presented in favor of plaintiffs like Tekoh.

While Tekoh now feigns uncertainty about the positions of the Third and Fourth Circuits, *see* Opp. 12 n.8, he correctly told the Ninth Circuit that the Third Circuit "follow[s]" the rule recognized in the Seventh and Ninth Circuits. ECF No. 61 at 4. The decision below acknowledged that, in the Third and Fourth Circuits, if an un-*Mirandized* statement is introduced at a criminal trial, the person against whom the statement is used may state a claim on that basis under Section 1983 against the officer who failed to provide a warning. *See* App. 19a (citing *Renda v. King*, 347 F.3d 550, 557-59 (3d Cir. 2003),

and *Burrell v. Virginia*, 395 F.3d 508, 513-14 (4th Cir. 2005)). District courts in the Third and Fourth Circuits follow this rule. *See, e.g.*, *Martinez v. Choe*, No. 19-17195, 2019 WL 6487315, at *3 (D.N.J. Dec. 3, 2019) (dismissing Section 1983 claim, but permitting plaintiff to re-plead "if he can allege that he wrote the incriminating letter in custody without a *Miranda* warning and the letter was used against him at trial"); *Cash v. Metts*, No. 12-1815, 2013 WL 4042158, at *8 (D.S.C. Aug. 7, 2013).

2. *Circuits refusing to recognize Section 1983 liability based on* Miranda *violations.* Tekoh also acknowledges (at 8), that other circuits refuse to permit Section 1983 claims against law-enforcement officers for *Miranda* violations. He nevertheless talks down the split by mischaracterizing the case law from those circuits.

First, although Tekoh concedes that *Hannon v. Sanner*, 441 F.3d 635 (8th Cir. 2006) (Colloton, J.), conflicts with the decision below, he tries to distinguish *Hannon* on the ground that the case did not involve any unwarned statements that were "actually used in a criminal trial." Opp. 8-9. That is flat-out wrong. As *Hannon* explained, the plaintiff's Section 1983 claim in that case arose from the erroneous admission of unwarned statements at the plaintiff's first criminal trial for murder. 441 F.3d at 635-36 (noting that the Minnesota Supreme Court later held that "the trial court had erred in admitting evidence of a confession" and "the statements should have been suppressed").

Tekoh also dismisses *Hannon* as a "dated outlier." Opp. 13. But *Hannon* was decided after *Dickerson*, *Chavez v. Martinez*, 538 U.S. 760 (2003), and *United States v. Patane*, 542 U.S. 630 (2004)—and in the

same year as the key Seventh Circuit decision on which Tekoh himself relies. *See* Opp. 1-2, 7-8, 11-12 & n.6 (citing *Sornberger v. City of Knoxville*, 434 F.3d 1006 (7th. Cir. 2006)). Nor is *Hannon* an "outlier." It stated a legal rule that is consistently applied within the Eighth Circuit. *See, e.g.*, *Dowell v. Lincoln Cnty.*, 927 F. Supp. 2d 741, 749 (E.D. Mo. 2013), *aff'd*, 762 F.3d 770 (8th Cir. 2014). And other circuits apply the same rule. *See infra* at 4-7.

Tekoh similarly mischaracterizes *McKinley v. City of Mansfield*, which rejected a plaintiff's claim that a police officer could be held liable under Section 1983 for a failure to *Mirandize*, even where the unwarned statement was admitted in a criminal trial. 404 F.3d 418, 432 n.13 (6th Cir. 2005), *cert. denied*, 546 U.S. 1090 (2006). According to Tekoh (at 9), the "basis" of the Sixth Circuit's decision in *McKinley* was that the statements "were not actually used in a criminal trial." That is—again—wrong. The Sixth Circuit made absolutely clear that the unwarned statements at issue *were* admitted at the plaintiff's criminal trial. *See* 404 F.3d at 436 ("McKinley's incriminating statements were used at his trial . . . ."); *id.* at 439 ("[W]hen the prosecutor introduced the statements at McKinley's trial . . . ."); *see also id.* at 432. And the court's footnote rejecting the *Miranda* claim accordingly said nothing about the unwarned statements not being introduced at trial. *Id.* at 432 n.13. Tekoh's claim that *McKinley* turned on that non-existent fact is mystifying.

Tekoh also notes (at 9-10) *McKinley*'s statement that a Section 1983 claim may lie against an officer who "*compell*[*ed*] a suspect to make incriminating statements that are later used against him at trial." 404 F.3d at 437 (emphasis added). But for purposes

of the plaintiff's Section 1983 claim, the Sixth Circuit refused to equate "compelled" with "unwarned": Indeed, it specifically rejected the argument that the "failure to read [the suspect] *Miranda* warnings" was "actionable under § 1983" as "squarely foreclosed" by *Chavez*, 538 U.S. at 772. 404 F.3d at 432 n.13. *McKinley* directly conflicts with the Ninth Circuit's decision below, as Judge Bumatay pointed out. *See* App. 95a.

Tekoh does not contest that the Tenth Circuit's decision in *Bennett v. Passic*, 545 F.2d 1260 (10th Cir. 1976), conflicts with the decision below. Rather, he argues (at 10-11) that *Bennett* should be discounted because it predates *Dickerson*. But *Bennett* is consistent with *Dickerson* and tracks Chief Justice Rehnquist's own view that, although *Miranda* is a constitutional rule, the failure to give a *Miranda* warning "cannot be grounds for a § 1983 action." *Chavez*, 538 U.S. at 772 (plurality op., joined in full by Rehnquist, C.J.). In any event, the Tenth Circuit continues to apply *Bennett* as the basis for dismissing Section 1983 claims against law-enforcement officers for an alleged failure to *Mirandize*. *See, e.g.*, *Holmes v. Town of Silver City*, 826 F. App'x 678, 680-81 (10th Cir. 2020) (citing *Bennett* to dismiss Section 1983 claim founded on an alleged *Miranda* violation).

Likewise, Tekoh does not attempt to argue that the Eleventh Circuit's decision in *Jones v. Cannon*, 174 F.3d 1271 (11th Cir. 1999), can be reconciled with the decision below. He argues instead that *Dickerson* abrogated *Jones*, notwithstanding that the Eleventh Circuit continues to rely on *Jones* when dismissing Section 1983 claims alleging an officer's failure to *Mirandize*. *See* Opp. 11 & n.5 (collecting cases); *Parris v. Taft*, 630 F. App'x 895, 901 (11th Cir. 2015)

(reaffirming *Jones* because *Miranda* procedures are "merely a procedural safeguard, and not a substantive right" (citation omitted)); *see also, e.g.*, *Kuponiyi v. Sallis*, No. 18-cv-794, 2019 WL 2487748, at *2, 4 n.7 (N.D. Ala. Jan. 23, 2019) (citing *Jones* and dismissing Section 1983 claim against an officer based on un-*Mirandized* statements admitted at a criminal trial). The Eleventh Circuit's rule plainly conflicts with the Ninth Circuit's decision below.

Finally, Tekoh asks this Court to ignore a Fifth Circuit decision barring Section 1983 liability based on a *Miranda* violation because the Fifth Circuit's analysis focused on proximate causation. *See* Opp. 12 (discussing *Murray v. Earle*, 405 F.3d 278 (5th Cir. 2005)). But the Fifth Circuit's rationale undoubtedly deepens the split: Under *Murray*, the Fifth Circuit would have rejected Tekoh's claim as a matter of law, because law-enforcement officers who take a criminal suspect's unwarned statements are *not* subject to Section 1983 liability simply because such statements are later used against that suspect at trial. 405 F.3d at 290-93. That reflects a direct conflict with the decision below on the question presented.

Moreover, proximate causation is a key consideration in these cases because it is an element in establishing Section 1983 liability—as the Ninth Circuit panel recognized when it held that petitioner proximately caused the deprivation of the alleged right at issue here. App. 22a ("[A] jury could infer that the subsequent introduction of the statements in Tekoh's criminal trial was the reasonably foreseeable consequence of Deputy Vega's conduct."). This case concerns whether law-enforcement officers may be held liable for the improper introduction of statements into evidence in court. That question

necessarily entails a consideration of proximate causation, and the proximate-causation aspect of that question is squarely presented here. *See infra* at 9-10.

In short, Tekoh admits that a circuit split exists, and his attempts to recast that split as stale or shallow fail. Only this Court can resolve the conflict.

II. The Ninth Circuit's Decision Is Wrong

Tekoh devotes much of his opposition to a strawman—the notion that the petition is an attack on *Miranda* and *Dickerson*. That's wrong: Petitioner's arguments are fully compatible with *Miranda* and its progeny. It is the Ninth Circuit's decision that deviates markedly from the logic of *Miranda*, and from this Court's subsequent decisions in *Dickerson*, *Chavez*, and *Patane*. *See* Pet. 24-28. And Tekoh is also wrong to claim that petitioner's alternative proximate-causation argument has not been preserved; in fact, it was fully preserved—and undoubtedly passed upon—below.

1. Tekoh's brief proceeds from the premise (at 1) that the petition "seeks to overturn . . . *Dickerson*." Not so. No one disputes *Dickerson*'s holding that *Miranda* set forth a "constitutional rule" that governs the procedural rules promulgated by Congress and the States alike, 530 U.S. at 437-40, and that no statute may contravene. *See* Pet. 24-28. What the petition recognizes—and what Tekoh fails to acknowledge—is that *Dickerson* also observed that *Miranda* warnings are "not themselves rights protected by the Constitution." 530 U.S. at 437-38 (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)).

This explains why Chief Justice Rehnquist—*Dickerson*'s author—saw no conflict between that opinion and the subsequent plurality opinions in *Chavez* and *Patane*, which he joined in full and which expressly warned against treating *Miranda* warnings as freestanding constitutional rights. *See Patane*, 542 U.S. at 641 ("[A] mere failure to give *Miranda* warnings does not, by itself, violate a suspect's constitutional rights or even the *Miranda* rule."); *Chavez*, 538 U.S. at 772 (holding that an officer's "failure to read *Miranda* warnings to [a suspect] did not violate [the suspect's] constitutional rights and cannot be grounds for a § 1983 action"). Yet the decision below all but disregards *Chavez* and *Patane* on the ground that they somehow "muddied" *Dickerson*'s rule of decision. App. 13a-14a.

Tekoh also contends that petitioner's merits argument conflicts with this Court's decisions "permitt[ing] habeas claims based on the admission of un-*Mirandized* statements" "without any additional showing of coercion," Opp. 17, 21 (citing *Withrow v. Williams*, 507 U.S. 680, 690-95 (1993)). But he overlooks a critical distinction. Unlike Section 1983, the habeas statute does not provide a cause of action for the violation of a constitutional "right." *See* 28 U.S.C. § 2254(a) (instead authorizing release from custody "on the ground that [petitioner] is in custody in violation of the Constitution or laws and treaties of the United States."); *see also id.* § 2255(a) (similar). Moreover, *Withrow* was careful to reaffirm that the *Miranda* rule is "prophylactic," and merely "safeguards" the core trial right protected by the Fifth Amendment itself. 507 U.S. at 690-91.

This case has nothing to do with habeas—which this Court has recognized is "unique," and only "civil"

in a "gross and inexact" sense. *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969). There is no reason that *Miranda*'s enforceability in habeas proceedings necessarily implies a right to bring a Section 1983 claim for money damages against law-enforcement officers.

2. Tekoh also attempts to shield the Ninth Circuit's decision from challenge by asserting that petitioner's alternative merits argument—regarding the absence of proximate causation—was not "properly preserve[d]" below. Opp. 18. That assertion is baseless: Petitioner sought and obtained a jury instruction on proximate causation before the District Court, *see* App. 108a, 118a, and the Ninth Circuit extensively analyzed proximate causation as a necessary step to reach its holding on appeal, *see* App. 20a-23a. The issue was preserved below, was passed upon below, and is now squarely presented to this Court as part of the question presented.

As petitioner requested at trial, the final jury instructions explained that "the Plaintiff must prove . . . that the acts or failures to act of the Defendant were *so closely related* to the deprivation of the Plaintiff's rights *as to be the moving force that caused the ultimate injury*." App. 118a. Judge Wu included that jury instruction because he rightly understood the defense's argument to be that "the officer knew that the confession could be utilized, [but] in many instances wouldn't be utilized," and that the prosecutor's decision to admit the confession was therefore a "break in causation." Pretrial Hr'g Tr. 51:8-14, *Tekoh v. County of Los Angeles*, No. 18-56414 (C.D. Cal. Sept. 24, 2018), Dkt. No. 343.

The Ninth Circuit thus naturally recognized that resolution of this proximate causation issue was a

necessary aspect of Tekoh's appeal. Indeed, the panel exhaustively addressed the issue, devoting several pages to the proposition that a law-enforcement officer may be the "cause[]" of a Fifth Amendment violation occurring at trial. *See* App. 20a-23a. Petitioner's proximate-causation argument is properly before this Court.

III. The Question Presented Is Important And Recurring

Finally, Tekoh tries to downplay the importance of the issues presented here. But as underscored by the amicus briefs filed by a range of amici who would bear the brunt of the Ninth Circuit's analysis—including seventeen States and territories, the International Municipal Lawyers Association (IMLA), and the National Association of Police Organizations (NAPO)—the question presented is frequently litigated and exceptionally important.

Tekoh says there is a "paucity of cases raising these issues," Opp. 21, because the question presented can arise only after a "criminal trial that . . . results in an acquittal," *id.* at 8. Wrong again: This question also arises when a guilty verdict secured on the basis of an unwarned statement is vacated on direct appeal or through post-conviction review—which regularly happens. *See, e.g.*, *Hannon*, 441 F.3d at 635. And Tekoh offers no answer to the *nineteen* pending cases the petition cites against local governments or officials around the country implicating the question presented—many of which involve the exact fact pattern at issue, where an un-*Mirandized* statement was used against the plaintiff at a criminal trial, and the plaintiff later sues the officer under Section 1983. Pet. 33 n.6. That wasn't

even a full list: Other pending cases present the same question in situations similar to this case.[1] Indeed, as amici have noted, the decision below is already "encouraging plaintiffs to file new *Miranda*-based § 1983 claims." IMLA & Cal. State Ass'n of Counties Amici Br. 15 (IMLA Br.). Tekoh ignores these cases completely.

Tekoh claims the "potential impact of civil liability on police officers" is "unsupported by any evidence." Opp. 20. But amici have shown that extending Section 1983 liability to the circumstances presented here imposes real costs on local governments. As IMLA explains, liability demands presented by plaintiffs in these cases are significant enough, especially for small local governments. *See* IMLA Br. 14-15 (listing illustrative damages claims running in the millions). And as NAPO emphasizes, the most significant costs are the litigation and public-safety costs: Litigation of this kind diverts law-enforcement officers from their ordinary duties, and "over-deter[s] and distract[s] officers from efficiently questioning suspects, making investigations less effective." NAPO Amicus Br. 4; *see also id.* at 10-11 (quantifying litigation and settlement costs). Officers should not fear liability for "judgment calls in the field" about a suspect's custodial status—"a highly fact intensive, murky analysis that even courts have struggled to apply." Arizona et al. Amici Br. 2.

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[1] *See, e.g.*, *Savory v. Cannon*, 532 F. Supp. 3d 628, 632-33 (N.D. Ill. 2021); *Walker v. City of Chicago*, No. 1:20-cv-7209 (N.D. Ill. filed Dec. 6, 2020); *Solache v. City of Chicago*, No. 1:18-cv-2312 (N.D. Ill. filed Mar. 30, 2018); *DeLeon-Reyes v. Guevara*, No. 1:18-cv-1028 (N.D. Ill. filed Feb. 9, 2018).

Needless to say, the decision below—from the nation's largest circuit—"will only aggravate the enormous flood of § 1983 litigation that local governments face every year." IMLA Br. 5-6. This Court should step in to cut off an expanding genre of misguided and costly Section 1983 litigation.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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