No. 21-499

In the Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERENCE B. TEKOH,

Respondent.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

In *Miranda v. Arizona*, 384 U.S. 436 (1966), this Court announced a prophylactic rule protecting the Fifth Amendment right against self-incrimination. That rule generally prohibits criminal trial courts from admitting into evidence against a criminal defendant any self-incriminating statement made by that defendant while he was in custody, unless the defendant first received certain warnings spelled out in *Miranda*. The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides a damages remedy for deprivations of any right secured by the Constitution and laws of the United States. The question presented is:

Whether a plaintiff may state a claim for relief against a law enforcement officer under Section 1983 based simply on an officer's failure to provide the warnings prescribed in *Miranda*.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Carlos Vega was a defendant-appellee in the United States Court of Appeals for the Ninth Circuit. The County of Los Angeles and Dennis Stangeland, Sergeant with the Los Angeles County Sheriff's Department, were also defendants-appellees in the U.S. Court of Appeals for the Ninth Circuit, and are not participating in the proceedings in this Court. The Los Angeles County Sheriff's Department and Does 1 to 10, were named as defendants in the United States District Court for the Central District of California.

Respondent Terence B. Tekoh was plaintiff-appellant in the United States Court of Appeals for the Ninth Circuit.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW.......... ii

TABLE OF AUTHORITIES...................................... vi

OPINIONS BELOW...1

JURISDICTION...1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

INTRODUCTION 2

STATEMENT OF THE CASE....................................5

A. The Sexual Assault And Tekoh's Confession 5

B. Tekoh's Civil Action Under Section 1983 8

C. The Ninth Circuit's Decision 9

SUMMARY OF ARGUMENT...................................11

ARGUMENT 15

I. Section 1983 Does Not Allow Damages Claims Against Police Officers For Taking Unwarned But Voluntary Statements 15

A. *Miranda* Establishes An Evidentiary Rule That Applies To Criminal Trials, Not A Rule Directly Regulating Police Conduct 15

TABLE OF CONTENTS—Continued

Page

B. A Violation Of *Miranda*'s Exclusionary Rule Does Not Equate To A Violation Of The Fifth Amendment 19

1. *Miranda* Is Prophylactic And Sweeps More Broadly Than The Fifth Amendment 19

2. *Dickerson* Does Not Equate A *Miranda* Violation With A Fifth Amendment Violation 26

3. Extending *Miranda* To Create Section 1983 Liability Is Not Necessary To Protect The Fifth Amendment Right Against Self-Incrimination 32

C. Law-Enforcement Officers Do Not Proximately Cause The Improper Admission Of Unwarned Statements 36

1. Section 1983 Claims Require Proof That The Defendant Proximately Caused A Constitutional Violation 37

2. Reasonable Officers Should Presume That Prosecutors And Judges Will Not Violate *Miranda* 39

3. The Ninth Circuit's Approach To Proximate Causation Is Deeply Flawed 42

TABLE OF CONTENTS—Continued

Page

II. The Decision Below Imposes Undue Burdens On Law Enforcement 47

CONCLUSION..51

ADDENDUM

U.S. Const. amend. V..1a

42 U.S.C. § 1983...2a

TABLE OF AUTHORITIES

Page(s)

CASES

Angov v. Lynch,
788 F.3d 893 (9th Cir. 2015)................................41

Ashcroft v. Iqbal,
556 U.S. 662 (2009)..38

Blessing v. Freestone,
520 U.S. 329 (1997)..31

Brecht v. Abrahamson,
507 U.S. 619 (1993)..20

Brower v. County of Inyo,
489 U.S. 593 (1989)..37

Caballero v. City of Concord,
956 F.2d 204 (9th Cir. 1992)................................48

Chavez v. Martinez,
538 U.S. 760 (2003)......................................*passim*

Connecticut v. Barrett,
479 U.S. 523 (1987)..22

County of Los Angeles v. Mendez,
137 S. Ct. 1539 (2017)..37

CSX Transportation, Inc. v. McBride,
564 U.S. 685 (2011)..38

Davis v. United States,
512 U.S. 452 (1994)..32

TABLE OF AUTHORITIES—Continued

Page(s)

Department of Transportation v. Public Citizen,
541 U.S. 752 (2004) 38

Dickerson v. United States,
530 U.S. 428 (2000) .... *passim*

Golden State Transit Corp. v. City of Los Angeles,
493 U.S. 103 (1989) 31

Harris v. New York,
401 U.S. 222 (1971) .... *passim*

Howes v. Fields,
565 U.S. 499 (2012) 20, 44

J.D.B. v. North Carolina,
564 U.S. 261 (2011) 20, 29

Lexmark International, Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014) 38, 43

Mapp v. Ohio,
367 U.S. 643 (1961) 30

Maryland v. Shatzer,
559 U.S. 98 (2010) 20, 32, 44

Michigan v. Harvey,
494 U.S. 344 (1990) 20

TABLE OF AUTHORITIES—Continued

Page(s)

Michigan v. Mosley,
423 U.S. 96 (1975)..20

Michigan v. Payne,
412 U.S. 47 (1973)..............................20, 25, 29, 30

Michigan v. Tucker,
417 U.S. 433 (1974).......................18, 23, 30, 32, 35

Mincey v. Arizona,
437 U.S. 385 (1978)..24

Miranda v. Arizona,
384 U.S. 436 (1966)......................................*passim*

Mississippi Department of Transportation v. Signal International, LLC (In re Signal International, LLC),
579 F.3d 478 (5th Cir. 2009)....................................38

Montejo v. Louisiana,
556 U.S. 778 (2009)........................4, 20, 29, 30, 32

New York v. Quarles,
467 U.S. 649 (1984)......................................*passim*

Ohio v. Robinette,
519 U.S. 33 (1996)..21

Oregon v. Elstad,
470 U.S. 298 (1985)......................................*passim*

Paroline v. United States,
572 U.S. 434 (2014)..38

TABLE OF AUTHORITIES—Continued

Page(s)

Plumhoff v. Rickard,
572 U.S. 765 (2014)..49

Stoot v. City of Everett,
582 F.3d 910 (9th Cir. 2009)........10, 42, 43, 45, 46

Townes v. City of New York,
176 F.3d 138, 145 (2d Cir.) 31

United States v. Armstrong,
517 U.S. 456 (1996)..41

United States v. Blue,
384 U.S. 251 (1966)..50

United States v. Calandra,
414 U.S. 338 (1974)..30

United States v. Chemical Foundation, Inc.,
272 U.S. 1 (1926)..41

United States v. DeSantis,
870 F.2d 536 (9th Cir. 1989)...............................23

United States v. Mobley,
40 F.3d 688 (4th Cir. 1994).................................23

United States v. Patane,
542 U.S. 630 (2004)....................................*passim*

United States v. Verdugo-Urquidez,
494 U.S. 259 (1990)..33

TABLE OF AUTHORITIES—Continued

Page(s)

Withrow v. Williams,
507 U.S. 680 (1993)....................................33

Yarborough v. Alvarado,
541 U.S. 652 (2004)....................................44

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. V....................................16, 18, 25

18 U.S.C. § 3501(a)....................................27

18 U.S.C. § 3501(b)....................................27

28 U.S.C. § 1254(1)....................................1

42 U.S.C. § 1983....................................*passim*

OTHER AUTHORITIES

2 Wayne R. LaFave et al., *Criminal Procedure* (4th ed. 2021 update, Westlaw)....................................44

Restatement (Second) of Torts (1965)....................................38

Restatement (Third) of Torts: Liability for Physical and Emotional Harm (2010)...........38, 43

OPINIONS BELOW

The Ninth Circuit's decision (Pet. App. 1a-26a) is reported at 985 F.3d 713, and opinions concerning the denial of rehearing en banc (Pet. App. 71a-96a) are reported at 997 F.3d 1260. The district court's orders granting a new trial (Pet. App. 30a-61a), denying respondent's requested jury instruction (Pet. App. 62a-66a), and confirming the judgment (Pet. App. 67a-70a) are not published.

JURISDICTION

The Ninth Circuit entered judgment on January 15, 2021, and denied petitioner's motion for rehearing en banc on June 3, 2021. Pet. App. 1a-26a, 71a-72a. The petition for a writ of certiorari was timely filed on October 1, 2021, and granted on January 14, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the addendum to this brief.

INTRODUCTION

The issue in this case is whether a police officer may be held liable under 42 U.S.C. § 1983 for questioning a criminal suspect without first providing warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966). The answer to that question is no. *Miranda* does not directly regulate police conduct, but instead establishes a prophylactic rule of evidence designed to protect a criminal defendant's Fifth Amendment right against compelled self-incrimination at trial. Because *Miranda*'s evidentiary rule sweeps more broadly than the Fifth Amendment, a violation of that rule does not equate to a violation of the Fifth Amendment. And because a *Miranda* violation occurs only when a prosecutor independently chooses to introduce the unwarned statement as part of the state's trial evidence, the police officer is not the proximate cause of that violation. For both of these independent reasons, there is no Section 1983 liability in these circumstances.

Here, the issue arises from the efforts of Petitioner Carlos Vega, a Los Angeles County sheriff's deputy, to investigate a sexual assault against an immobilized female patient at a local hospital. After the patient identified Respondent Terence Tekoh as the perpetrator, Vega questioned Tekoh at the hospital and received his signed confession to the assault. During Tekoh's state criminal proceedings, two judges concluded that the confession was admissible at trial—even though Vega had not given Tekoh a *Miranda* warning—because Tekoh was not in custody when the questioning occurred. In this later-filed Section 1983 action, two different juries found that Vega did not use coercive techniques to extract an involuntary confession or fabricate evidence, and they

accordingly rejected Tekoh's claims under the Fifth and Fourteenth Amendments.

Those jury findings exonerating Vega are not disputed in this Court. Here, the only issue is whether Vega's mere failure to provide a *Miranda* warning when questioning Tekoh can give rise to Section 1983 liability—even in the absence of coercion, compulsion, or fabrication of evidence—because prosecutors later introduced Tekoh's confession in his criminal trial. The district court answered that question in the negative, explaining that *Miranda* establishes a "prophylactic rule" that does not itself establish a new Fifth Amendment constitutional right. JA-291-92. But the Ninth Circuit reversed and granted a new trial, holding that "the right of a criminal defendant against having an un-*Mirandized* statement introduced in the prosecution's case-in-chief is . . . a right secured by" the Fifth Amendment. Pet. App. 13a.

The Ninth Circuit's decision was wrong, and this Court should overturn it for either of two independent reasons.

First, Tekoh cannot establish the violation of any constitutional right. A claim under Section 1983 requires the deprivation of a "right[], privilege[], or immunit[y]" secured by federal law, 42 U.S.C. § 1983, and here Tekoh alleges a deprivation of his Fifth Amendment right against self-incrimination at trial. But establishing a violation of *Miranda* does not establish a violation of the Fifth Amendment. *Miranda* creates a procedural rule barring prosecutors from introducing—and courts from admitting—certain unwarned statements as part of the prosecution's case-in-chief at a criminal trial. For decades, this Court has consistently described that

exclusionary rule as a "*prophylactic* protection of the [Fifth Amendment] right against compelled self-incrimination." *Montejo v. Louisiana*, 556 U.S. 778, 794 (2009) (emphasis added). In other words, the "*Miranda* exclusionary rule . . . sweeps more broadly than the Fifth Amendment itself," and "may be triggered even in the absence of a Fifth Amendment violation." *Oregon v. Elstad*, 470 U.S. 298, 306 (1985).

Accordingly, a criminal defendant who alleges that a criminal trial court wrongly allowed the introduction of evidence obtained without *Miranda* warnings has alleged only a violation of the *Miranda* exclusionary rule, not a violation of the Fifth Amendment itself. As a plurality of this Court explained in *Chavez v. Martinez*, prophylactic rules like the *Miranda* rule "do not extend the scope of the constitutional right," and "violations of judicially crafted prophylactic rules do not violate the constitutional rights of any person." 538 U.S. 760, 772 (2003). That is true even though this Court recognized in *Dickerson v. United States*, 530 U.S. 428 (2000), that the prophylactic *Miranda* rule has constitutional underpinnings and cannot be overturned by statute. The Ninth Circuit's contrary ruling was mistaken, as seven dissenters from en banc review pointed out.

Second, even assuming that the introduction of Tekoh's un-*Mirandized* statement at the criminal trial violated his Fifth Amendment rights, Vega was not the proximate cause of that violation. A claim under Section 1983 may be directed only against a defendant who "subjects" the plaintiff, or "causes [the plaintiff] to be subjected," to the violation of a federal right. 42 U.S.C. § 1983. But *Miranda*'s exclusionary rule is a rule of evidence directed at courts and

prosecutors; it is "not a code of police conduct." *United States v. Patane*, 542 U.S. 630, 637 (2004) (plurality op.). A *Miranda* violation can occur at trial only when an unwarned statement is introduced against the defendant during the prosecution's case-in-chief. Police officers do not control such evidentiary decisions at trial, and they are entitled to presume that prosecutors and courts will follow the law in excluding any statements that are inadmissible under *Miranda*. Such officers are therefore not the proximate cause of any *Miranda* violation.

In recognizing a cause of action under Section 1983, the Ninth Circuit adopted a rule that threatens the basic structure of this Court's *Miranda* precedents. The Court has consistently emphasized that the scope of the *Miranda* rule should be "close-fit" to its prophylactic purpose, and has accordingly tailored that rule based on a balancing of different interests. *Id.* at 639-40. The decision below cuts against that close tailoring by deterring police from receiving unwarned confessions even in circumstances where no such deterrence is warranted. And it wrongly subjects police departments to pervasive litigation risks in connection with routine investigatory work.

The decision below should be reversed.

STATEMENT OF THE CASE

A. The Sexual Assault And Tekoh's Confession

On March 19, 2014, Deputy Vega responded to a call from the Los Angeles County/USC Medical Center to investigate allegations that a hospital orderly had sexually assaulted a 53-year-old patient. Pet. App. 2a; JA-445-53. Vega spoke with the patient,

who provided a detailed account of the assault. JA-263-65, 268-70, 399-401.

The patient had been admitted to the hospital through the emergency room on March 15, when doctors discovered she had possibly suffered a brain aneurysm, or bleeding in her brain. JA-132-33. On the morning of March 19, doctors had initiated an angiogram procedure when the patient suffered a stroke, leaving her partially incapacitated and impairing her ability to speak and move. JA-290, 364-66. The doctors immediately sent her for an emergency MRI, after which she was transported to a hospital room by an orderly.

The patient told Vega that when she woke up in the room, she was completely alone with the orderly. JA-289-90. At that point, the orderly "lifted the sheets" covering her on the bed, "started looking at my vagina," and "spread it to look inside," including by "put[ting] his fingers inside." JA-365-66. The patient "told [the orderly] to stop, please," but she was unable to effectively resist because—due to her condition—she was "having a hard time speaking" and was "paralyzed" on her left side. JA-366. The patient later described the assault as "a nightmare," because "I couldn't move at all to defend myself." JA-291. When the patient related her story to Vega, she was "crying uncontrollably," and Vega found her account "very believable." JA-264-65.

Vega visited the nurses' station to ask who had transported the patient for her MRI. JA-269. They identified Tekoh, who fit the physical description given by the patient. *Id.* When Vega found Tekoh and asked what happened, Tekoh quickly admitted that he had "made a mistake" and asked to "talk to [Vega] away from [his] co-workers and get a little privacy."

Pet. App. 4a-5a. The two went to a nearby MRI reading room to talk in private. *Id.* at 5a; *see also* JA-275. At that time, Vega was still hopeful that "it was something more of a medical procedure" and that Tekoh "could explain himself." JA-410; *see also* JA-412. Vega did not give Tekoh a *Miranda* warning because Tekoh was not under arrest or in custody. Pet. App. 5a; JA-276-77.

Tekoh agreed to write down what happened while Vega called his sergeant, Dennis Stangeland. Pet. App. 5a. Tekoh then wrote an incriminating statement without further prompting. JA-456. In the statement, Tekoh confessed to "spreading [the victim's] vagina lip for a quick view," described the conduct as "despicable," and apologized for "the most weakest moment I've ever been caught up with in my life." *Id.*

Sergeant Stangeland soon arrived on the scene, and he and Vega continued speaking with Tekoh. JA-439-40. According to Stangeland, Vega questioned Tekoh "in a very conversational tone" and Tekoh admitted to non-consensual sexual touching of the victim, though he denied penetrating the patient's vagina with his fingers. JA-442-43. Stangeland later testified that Tekoh's demeanor was "contrite," like someone who "regretted what he had done." JA-443.

Tekoh was arrested for unlawful sexual penetration and charged in state court. Pet. App. 5a. After considering the circumstances under which Tekoh was questioned, the state prosecutor exercised what she described as her own "independent prosecutorial judgment" and concluded that Tekoh had neither been "under arrest nor 'in custody' for purposes of *Miranda*," and thus that his confession was admissible at trial. JA-156-57. The trial court

agreed, rejecting Tekoh's effort to exclude the confession under *Miranda*. *Id*. But the court ultimately declared a mistrial because of an unrelated evidentiary issue. *Id.* During the retrial before a new judge, the prosecution again sought to introduce Tekoh's incriminating statement and the court again admitted it. *Id.* After hearing Tekoh's and the victim's conflicting accounts, the jury returned a verdict of not guilty. Pet. App. 5a.

B. Tekoh's Civil Action Under Section 1983

After his acquittal, Tekoh filed a civil damages action under 42 U.S.C. § 1983 against Vega and several other defendants for violating his Fifth Amendment right against self-incrimination. Pet. App. 5a-6a; JA-147-49. Among other things, Tekoh claimed that Vega violated his constitutional "right" to a *Miranda* warning. JA-147-49.

At the first civil trial, Tekoh asked the district court to instruct the jury that it must find Vega liable on the self-incrimination claim if it determined that Vega took a custodial, un-*Mirandized* statement that was later used against Tekoh at his criminal trial. *See* JA-294-300. The court declined to give this instruction. It reasoned that *Miranda* had announced only a "prophylactic rule," and that a Section 1983 plaintiff like Tekoh could not "use a prophylactic rule to create a violation of a constitutional right," for purposes of triggering Section 1983 liability. JA-295. Instead, the court instructed the jury to evaluate Tekoh's claim as a Fourteenth Amendment due process claim alleging that Vega used coercive investigation techniques to fabricate evidence. Pet. App. 6a-7a; JA-256-62. The jury returned a full verdict in Vega's favor. Pet. App. 27a-29a.

After trial, the district court determined it had erred by instructing the jury solely on a Fourteenth Amendment due process violation as to the allegedly coerced confession, rather than a Fifth Amendment self-incrimination violation. Pet. App. 7a, 38a-54a. It therefore ordered a new trial. *Id.* at 7a. This time, the court instructed the jury to determine whether Vega had "improperly coerced or compelled" Tekoh's written statement under the Fifth Amendment by considering the totality of the circumstances surrounding the questioning—including its location, length, and manner, as well as whether Vega provided a *Miranda* warning. *Id.* at 7a-8a; *see also id.* at 117a-126a. Once again, a jury rejected Tekoh's claim that his statement was coerced, and returned a verdict for Vega. *Id.* at 68a.

C. The Ninth Circuit's Decision

Tekoh appealed to the Ninth Circuit. He argued that the district court should have instructed the jury to find Vega liable if the incriminating statement introduced at Tekoh's criminal trial was taken in a custodial setting without *Miranda* warnings—even absent any proof of coercion or fabrication of evidence.

The Ninth Circuit agreed, holding that "use of an un-*Mirandized* statement against a defendant in a criminal proceeding violates the Fifth Amendment and may support a § 1983 claim" against the officer who obtained the statement. Pet. App. 18a. The court recognized that "merely taking a statement without *Miranda* warnings is insufficient to give rise to a § 1983 claim." *Id.* at 18a & n.7. It also acknowledged that the Supreme Court has repeatedly "described *Miranda* warnings as mere 'prophylactic rules' or 'procedural safeguards' that were 'not

themselves rights protected by the Constitution.'" *Id.* at 12a (citation omitted) (collecting cases).

The Ninth Circuit nevertheless held that this Court changed course in *Dickerson*, which invalidated a federal statute designed to override *Miranda*'s evidentiary rule. Pet. App. 12a-13a. According to the panel, *Dickerson* "affirmatively backed away from previous decisions . . . that had described *Miranda* warnings as merely prophylactic and 'not themselves rights protected by the Constitution.'" *Id.* at 20a (quoting 530 U.S. at 437-38). The court stated that this view of *Miranda* "was later muddied" in this Court's post-*Dickerson* cases, including *Chavez* and *Patane*, but that those cases were too fractured to be binding. *Id.* at 13a-23a. The panel therefore held that a plaintiff may bring a Section 1983 claim for deprivation of the Fifth Amendment right against self-incrimination so long as an un-*Mirandized* custodial statement was used against the plaintiff at his criminal trial. *Id.* at 13a.

The Ninth Circuit next turned to proximate causation. Applying its decision in *Stoot v. City of Everett*, 582 F.3d 910 (9th Cir. 2009), *cert. denied*, 559 U.S. 1057 (2010), the court concluded that the eventual introduction of Tekoh's statement at trial was attributable to Vega. Pet. App. 21a. It reasoned that there was "no question that Deputy Vega 'caused' the introduction of the statements at Tekoh's criminal trial," even though Vega was not one of the prosecutors or judges involved in admitting it. *Id.* In the Ninth Circuit's view, when Vega took Tekoh's statement it was natural and foreseeable that the statement would be improperly admitted at Tekoh's criminal trial. *Id.* at 21a-22a.

The Ninth Circuit therefore remanded the case for a *third* trial on Tekoh's Section 1983 claim. It directed the district court to instruct the jury that "the introduction of a defendant's un-*Mirandized* statement at his criminal trial during the prosecution's case in chief is alone sufficient to establish a Fifth Amendment violation and give rise to a § 1983 claim for damages." *Id.* at 26a.

The Ninth Circuit denied Vega's petition for rehearing en banc. *Id.* at 71a-72a. In a dissent joined by six other judges, Judge Bumatay argued that the panel's decision "contravene[d] the text and history of the Fifth Amendment and the undeniable weight of precedent," effectively "rewriting the Fifth Amendment." *Id.* at 81a-82a. As he noted, the Supreme Court's opinions have "uniformly recognized *Miranda* . . . as [a] prophylactic safeguard[] of the Fifth Amendment right [against self-incrimination], not a constitutional right in and of itself." *Id.* at 87a.

SUMMARY OF ARGUMENT

The Ninth Circuit erred in holding that Section 1983 supports a claim for damages against a police officer based on a violation of *Miranda*'s exclusionary rule.

I. Section 1983 grants a cause of action against "[e]very person who . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. When a plaintiff presents a Section 1983 claim against a police officer based on the officer's failure to provide *Miranda* warnings, that claim must

be rejected as a matter of law, for at least two independent reasons.

First, a plaintiff who establishes that an unwarned statement was introduced against him at a criminal trial in violation of *Miranda* does not thereby establish that he has been deprived of a "right[], privilege[], or immunit[y] secured by the Constitution." *Id.* The Ninth Circuit's decision mistakenly treated Tekoh's claim regarding an alleged violation of *Miranda*'s exclusionary rule as stating a claim for a violation of the Fifth Amendment right against self-incrimination. But the two are not equivalent: This Court has consistently recognized that *Miranda*'s exclusionary rule is a prophylactic rule that sweeps more broadly than the Fifth Amendment itself.

In *Dickerson*, this Court held that *Miranda* set out a constitutional rule that cannot be overturned by Congress or a state legislature. 530 U.S. at 444. But *Miranda*'s constitutional status does not mean that a violation of *Miranda* equates to the violation of a constitutional right. This Court's decisions before and after *Dickerson* make clear that *Miranda* simply supplies a constitutional prophylactic rule; that rule neither establishes a new constitutional right nor expands the Fifth Amendment right against self-incrimination. Thus, a plaintiff who asserts merely that an unwarned statement was introduced against him in violation of *Miranda* has no claim for relief under Section 1983.

Allowing a cause of action under Section 1983 for alleged *Miranda* violations would upset the careful balance that this Court has struck when crafting the scope of the *Miranda* rule. This Court has emphasized the need to maintain the "closest possible

fit" between *Miranda* and the Fifth Amendment privilege against self-incrimination. *Patane*, 542 U.S. at 643. Applying that approach, the Court has held that *Miranda* bars only the introduction of unwarned statements presented in the prosecution's case-in-chief at a criminal trial; it has declined to extend the *Miranda* rule—and the presumption of coercion on which that rule is based—beyond that circumstance. Tekoh effectively wants to extend *Miranda*'s presumption into subsequent civil actions for money damages. That extension is unnecessary to protect the Fifth Amendment right against self-incrimination, and it would undermine much of this Court's *Miranda* jurisprudence.

Second, an officer who takes an unwarned statement cannot be held liable for any ensuing *Miranda* violation at trial because he is not the proximate cause of that violation. The Ninth Circuit's causation holding—which blames the officer for an error of law committed by the prosecutor and trial court—is wrong and provides an independent basis for reversal.

Because *Miranda* creates a prophylactic *evidentiary* rule governing the admission of an unwarned statement at *trial*, violations of *Miranda* can be caused only by prosecutors and judges, not police officers. The Ninth Circuit's conclusion that such violations are nevertheless the "reasonably foreseeable" result of an officer's conduct is mistaken. When an officer in the field takes a lawful, unwarned statement, he is entitled to presume that prosecutors and judges will construe the law correctly in determining whether the statement is admissible. Here, for example, the California prosecutor responsible for Tekoh's case exercised her own

"independent prosecutorial judgment" when concluding that Tekoh's incriminating statement was admissible under *Miranda*. And two different California state trial judges agreed. Vega should not be held responsible for those decisions.

The Ninth Circuit's contrary approach—holding officers liable unless they affirmatively resist the prosecutor's decision to introduce the un-*Mirandized* statement—completely reverses the normal presumption of regularity that is afforded to prosecutors. It also misunderstands the nature and scope of *Miranda*, by assuming that police officers act wrongfully when they obtain an unwarned statement. *Miranda* does not prohibit taking unwarned statements; it merely forbids the subsequent admission of such statements at trial. The Ninth Circuit's holding to the contrary treats *Miranda* as establishing a "code of police conduct"—a proposition this Court has rejected. *Patane*, 542 U.S. at 637, 642 n.3 (plurality op.).

II. If adopted by this Court, the Ninth Circuit's rule would saddle police departments nationwide with extraordinary burdens in connection with lawful and appropriate investigative work. This case arises from the admission of a voluntary statement in evidence at a criminal trial after a state prosecutor and two different state judges independently concluded that the statement was non-custodial. Yet the Ninth Circuit has permitted Tekoh to second-guess those determinations in a Section 1983 action, and envisions that a civil jury will resolve factual disputes concerning whether Tekoh was in custody. Under the Ninth Circuit's approach, virtually any police interaction with a criminal suspect might give rise to a *Miranda*-based Section 1983 action for

damages—even where the police officer has acted entirely lawfully.

The Ninth Circuit's judgment should be reversed.

ARGUMENT

I. SECTION 1983 DOES NOT ALLOW DAMAGES CLAIMS AGAINST POLICE OFFICERS FOR TAKING UNWARNED BUT VOLUNTARY STATEMENTS

Section 1983 grants a cause of action against any state official who "subjects, or causes to be subjected," a person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. Tekoh's claim against Vega under *Miranda v. Arizona*, 384 U.S. 436 (1966), does not state a cause of action under Section 1983 for two independent reasons. First, a violation of *Miranda*'s prophylactic evidentiary rule does not equate to a violation of a defendant's Fifth Amendment rights, even if an unwarned statement is introduced at his criminal trial. Second, even if the Fifth Amendment is violated in such circumstances, the officer is not the proximate cause of the violation.

A. *Miranda* Establishes An Evidentiary Rule That Applies To Criminal Trials, Not A Rule Directly Regulating Police Conduct

1. *Miranda* is most famous for the warnings that many Americans could recite based simply on having watched a few police dramas on TV, at least as far as the "right to remain silent." But the decision is actually rooted in the Self-Incrimination Clause of the Fifth Amendment, which is framed in terms of a narrower right. It provides that "[n]o person . . . shall

be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V.

The Self-Incrimination Clause thus establishes a "prohibition on compelling a criminal defendant to testify against himself at trial." *United States v. Patane*, 542 U.S. 630, 637 (2004) (plurality op.) (citing *Chavez v. Martinez*, 538 U.S. 760, 764-68 (2003) (plurality op.)); *see also Chavez*, 538 U.S. at 777-79 (Souter, J., concurring in the judgment).[1] In that respect, the Clause gives criminal defendants a "self-executing" right to the exclusion of evidence, such that "'those subjected to coercive police interrogations have an *automatic* protection from the use of their involuntary statements (or evidence derived from their involuntary statements) in any subsequent criminal trial.'" *Patane*, 542 U.S. at 640 (quoting *Chavez*, 538 U.S. at 769).

In *Miranda*, this Court recognized the need to provide an extra layer of protection for defendants' Fifth Amendment right against self-incrimination. The Court noted that when police question criminal suspects held in government custody, those circumstances can create "inherently compelling pressures" making it hard to determine whether a suspect's statements are truly voluntary. *Miranda*, 384 U.S. at 467. That potentially "jeopardize[s]" the defendant's "privilege against self-incrimination" if the statements are subsequently used against the defendant at trial. *Id.* at 478; *see also Dickerson v. United States*, 530 U.S. 428, 435 (2000).

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[1] All further citations to *Patane* and *Chavez* are to the plurality opinions, unless otherwise noted.

To guard against this danger, *Miranda* developed a "system for protecting the [Fifth Amendment] privilege" in custodial interrogations. 384 U.S. at 471. Specifically, it created an evidentiary rule generally excluding from a criminal trial any testimonial statements made by the defendant while being interrogated in police custody, unless that defendant has been expressly advised of certain rights. Under *Miranda*, police wishing to obtain testimonial evidence in those circumstances must inform the suspect of the warning for which *Miranda* is now best known—that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning." *Id.* at 479. Without such warnings, "no evidence obtained as a result of interrogation can be used against him" as part of the prosecution's case-in-chief at trial." *Id.*

2. *Miranda* itself left some confusion over whether its rule operated directly on law enforcement (by requiring the warnings) or instead on prosecutors and courts (by requiring exclusion of testimonial statements obtained by law enforcement without warnings). But in subsequent cases, the Court definitively embraced the latter view.

Over the years, the Court has repeatedly emphasized that "[t]he *Miranda* rule is not a code of police conduct"; it does not "operate[] as a direct constraint on police"; and "police do not violate . . . the *Miranda* rule . . . by mere failures to warn." *Patane*, 542 U.S. at 637, 642 n.3. As Justice Marshall noted, *Miranda* leaves law enforcement "free to interrogate suspects without advising them of their constitutional

rights." *New York v. Quarles*, 467 U.S. 649, 686 (1984) (Marshall, J., dissenting). For that reason, the Court in *Chavez* rejected a Section 1983 claim based simply on an officer's failure to read *Miranda* warnings before a custodial interrogation. *See* 538 U.S. at 772 ("Chavez's failure to read *Miranda* warnings to Martinez did not violate Martinez's constitutional rights and cannot be grounds for a § 1983 action."); *id.* at 789 (Kennedy, J., concurring in relevant part and dissenting in part) ("[F]ailure to give a *Miranda* warning does not, without more, establish a completed violation when the unwarned interrogation ensues.").

Rather than imposing a direct constraint on officers, *Miranda* instead establishes an evidentiary "exclusionary rule" prohibiting the use of most unwarned self-incriminatory testimonial statements as part of the prosecutor's case-in-chief at a subsequent criminal trial. *Chavez*, 538 U.S. at 772; *id.* at 790 (Kennedy, J., concurring in relevant part) ("*Miranda* mandates a rule of exclusion."). *Miranda*'s "focus" on "the admissibility of statements [at trial]," *Patane*, 542 U.S. at 642 n.3, reflects its goal of protecting the Fifth Amendment privilege against self-incrimination, which by its terms protects a defendant only against being forced to serve as a "*witness* against himself" in "any criminal *case*," U.S. Const. amend. V (emphasis added); *see Chavez*, 538 U.S. at 766-67.

In this way, *Miranda* establishes "recommended 'procedural safeguards'" designed to "help police officers conduct interrogations without facing a continued risk that valuable evidence would be lost" at trial. *Michigan v. Tucker*, 417 U.S. 433, 443 (1974). But the mere failure to give a *Miranda* warning does

not itself violate "the Constitution (or even the *Miranda* rule, for that matter)." *Patane*, 542 U.S. at 637.

3. For all these reasons, Tekoh cannot argue that Vega consummated a constitutional violation at the moment he questioned Tekoh at the hospital without first providing him with *Miranda* warnings. Indeed, Tekoh's counsel expressly disclaimed that argument in the trial court. Pet. App. 102a. The Ninth Circuit likewise rejected it, explaining that "*Chavez* clearly stands for the proposition that merely taking a statement without *Miranda* warnings is insufficient to give rise to a § 1983 claim." *Id.* at 18a n.7.

B. A Violation Of *Miranda*'s Exclusionary Rule Does Not Equate To A Violation Of The Fifth Amendment

To prevail on his Section 1983 theory, Tekoh must establish that when an officer fails to provide a *Miranda* warning—and the criminal defendant's unwarned statement is then improperly introduced at trial—the defendant has necessarily been deprived of his Fifth Amendment right against self-incrimination. That proposition is unsound. *Miranda*'s exclusionary rule is prophylactic: It sweeps more broadly, and provides greater evidentiary protection at trial, than the Fifth Amendment itself. Thus, a violation of the *Miranda* rule at trial does *not* mean that the defendant's Fifth Amendment rights have been violated for purposes of a subsequent Section 1983 claim.

1. *Miranda* Is Prophylactic And Sweeps More Broadly Than The Fifth Amendment

a. This Court has consistently described *Miranda* as establishing a "prophylactic" rule whose core

purpose is to "safeguard the [Fifth Amendment] constitutional guarantee against self-incrimination." *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011); *see also, e.g.*, *Howes v. Fields*, 565 U.S. 499, 507 (2012) (noting that *Miranda* adopted a "set of prophylactic measures") (quoting *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010)); *Montejo v. Louisiana*, 556 U.S. 778, 794 (2009) (describing "*Miranda*'s prophylactic protection"); *Patane*, 542 U.S. at 636 ("[T]he *Miranda* rule is a prophylactic . . . ."); *Chavez*, 538 U.S. at 772 ("[T]he *Miranda* exclusionary rule [is] a prophylactic measure . . . ."); *id.* at 780 (Scalia, J., concurring in part in the judgment) ("Section 1983 does not provide remedies for violations of judicially created prophylactic rules, such as the rule of *Miranda* . . . ."); *Brecht v. Abrahamson*, 507 U.S. 619, 629 (1993) ("the *Miranda* prophylactic rule"); *Michigan v. Harvey*, 494 U.S. 344, 350 (1990) ("the prophylactic *Miranda* rules"); *Oregon v. Elstad*, 470 U.S. 298, 309 (1985) ("prophylactic *Miranda* procedures"); *Quarles*, 467 U.S. at 657 (noting *Miranda*'s "prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination"); *Michigan v. Mosley*, 423 U.S. 96, 112 (1975) (Brennan, J., dissenting) (noting that "a prophylactic rule was fashioned" in *Miranda*); *Michigan v. Payne*, 412 U.S. 47, 53 (1973) (describing *Miranda* as a "prophylactic constitutional rule[]"). The Court's repeated description of *Miranda* as a "prophylactic rule" squares with *Miranda* itself, which described its holding as having delineated a "system for protecting" the Fifth Amendment privilege against self-incrimination. *Miranda*, 384 U.S. at 471.

Miranda protects the Fifth Amendment privilege by excluding unwarned statements that *might* have

been the product of coercion, even if there was no actual coercion in real life. The Court has explained that the "Fifth Amendment prohibits use . . . only of *compelled* testimony." *Elstad*, 470 U.S. at 306-07. And *Miranda* "creates a presumption of compulsion" when police receive a self-incriminating custodial statement that is not preceded by *Miranda* warnings. *Id.* at 307. In that sense, *Miranda* creates a presumption that admitting an unwarned statement would violate the Fifth Amendment's prohibition on the introduction of compelled statements, and so "unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*." *Id.*

But in the decades following *Miranda*, this Court has recognized that the presumption of coercion underlying the *Miranda* rule is just that—a *presumption*. Application of the *Miranda* presumption does not establish that an unwarned statement is actually coerced or compelled in violation of the Fifth Amendment. As this Court has explained, the "*Miranda* exclusionary rule . . . sweeps more broadly than the Fifth Amendment," and a "simple failure to administer [*Miranda*] warnings" does not equate to "actual coercion." *Id.* at 306, 309; *see also id.* at 306 n.1 ("A *Miranda* violation does not *constitute* coercion but rather affords a bright-line, legal presumption of coercion . . . ."); *see also Ohio v. Robinette*, 519 U.S. 33, 43 (1996) (Ginsburg, J., concurring in the judgment). In other words, the *Miranda* presumption is "justified . . . by reference to its prophylactic purpose," but is "not itself required by the Fifth Amendment's prohibition on coerced

confessions." *Connecticut v. Barrett*, 479 U.S. 523, 528 (1987).

Because *Miranda*'s exclusionary rule rests on a mere presumption of coercion—and not on a determination of actual coercion—this Court has consistently limited *Miranda*'s scope. Although the Court has generally prohibited use of unwarned statements as part of the prosecution's case-in-chief, it has allowed the investigative and judicial use (including trial use) of such statements in a host of other circumstances—including where such use would be flatly barred if the statements were actually involuntary.

In *Quarles*, for example, the Court held that *Miranda* does not bar the evidentiary admission of statements elicited in questioning prompted by "public safety" concerns. 467 U.S. at 656. It recognized that even with respect to the prosecution's case-in-chief—the heartland of *Miranda*—"the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule." *Id.* at 657. In such cases, *Miranda*'s presumption of coercion falls away, and a suspect's unwarned custodial statements may be admitted against him in the prosecution's case-in-chief. *Id.* at 659-60.

As *Quarles* explained, that result does not allow for "'the introduction of coerced self-incriminating statements in criminal proceedings,'" because "the failure to provide *Miranda* warnings in and of itself does not render a confession involuntary." *Id.* at 655 n.5 (citation omitted). There is no public-safety exception for statements that are *actually* coerced, which must be suppressed under the Fifth Amendment's self-executing exclusionary rule—even

if the interrogating officer was motivated by a good-faith concern for the public safety. *See id.* at 658 n.7; *United States v. Mobley*, 40 F.3d 688, 692 (4th Cir. 1994), *cert. denied*, 514 U.S. 1129 (1995); *United States v. DeSantis*, 870 F.2d 536, 541 (9th Cir. 1989).

Likewise, in *Tucker*, this Court rejected the notion that the investigative fruits of an unwarned custodial statement must be suppressed at trial. 417 U.S. at 450-51. *Tucker* distinguished between police conduct that "abridge[s] [a defendant's] constitutional privilege against self-incrimination," and police conduct that "depart[s] only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege." *Id.* at 445-46. As the Court noted, the unwarned statement at issue in *Tucker* had not "deprive[d] [the defendant] of his privilege against compulsory self-incrimination as such, but rather failed to make available to him the full measure of procedural safeguards associated with that right since *Miranda*." *Id.* at 444. Because the unwarned statement was not actually "involuntary," and "involved no compulsion," the question whether the fruits of that statement could be admitted at trial turned only on the scope of the *Miranda* rule, and did not require application of the Fifth Amendment. *Id.* at 445-46. By contrast, where police *actually* compel or coerce a self-incriminating statement, the investigative fruits of that statement must be suppressed at trial. *See Patane*, 542 U.S. at 640 (citing *Chavez*, 538 U.S. at 769).

This Court built on *Tucker*'s holding in *Elstad*, which held that a warned and voluntary confession secured through information obtained from an earlier *unwarned* (but voluntary) custodial statement need not be suppressed at trial. The lower court in that

case "believed that the unwarned remark compromised the voluntariness of [the defendant's] later confession," *Elstad*, 470 U.S. at 309, and "assumed . . . that a failure to administer *Miranda* warnings necessarily breeds the same consequences as police infringement of a constitutional right," *id.* at 304. This Court reversed, explaining that "*Miranda*'s preventive medicine provides a remedy even to the defendant who has suffered no identifiable constitutional harm," and that "the *Miranda* presumption, though irrebuttable for purposes of the prosecution's case in chief, does not require that the [unwarned] statements and their fruits be discarded as inherently tainted." *Id.* at 307. "[A] suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings." *Id.* at 318.

And in *Harris v. New York*, this Court held that unwarned (but voluntary) custodial statements may be used at trial to impeach a criminal defendant's trial testimony. 401 U.S. 222, 225-26 (1971). The Court's analysis turned on the fact that the defendant in that case had made "no claim that the statements made to the police were coerced or involuntary." *Id.* at 224. As such, the question whether the statements could be used for impeachment purposes turned only on an application of the *Miranda* rule, which does not provide that unwarned statements are "barred for all purposes." *Id.* That is in contrast to actually involuntary statements, whose trial use *is* barred for all purposes, including impeachment. *See Mincey v. Arizona*, 437 U.S. 385, 401-02 (1978); *see also Patane*, 542 U.S. at 640.

Thus, *Miranda* established a prophylactic exclusionary rule that exists side-by-side with the "self-executing" exclusionary rule imposed by the Fifth Amendment itself. *Patane*, 542 U.S. at 640. A violation of one is not a violation of the other. As the *Chavez* plurality explained, prophylactic rules like the *Miranda* rule "do not extend the scope of the constitutional right itself," and "violations of judicially crafted prophylactic rules do not violate the constitutional rights of any person." 538 U.S. at 772. *Miranda* "created a protective umbrella serving to enhance [the Fifth Amendment] constitutional guarantee," but it did not "confer[] a constitutional right that had not existed prior to th[at] decision." *Payne*, 412 U.S. at 54.

b. This Section 1983 case perfectly illustrates the distinction between *Miranda* and the Fifth Amendment. Here, Tekoh argues that his Fifth Amendment right against self-incrimination was violated when prosecutors used his allegedly custodial, unwarned statement against him in a criminal trial. But the Fifth Amendment itself prohibits only the trial use of statements that are actually "compelled." *Elstad*, 470 U.S. at 306-07; *see also Chavez*, 538 U.S. at 772-73; *Quarles*, 467 U.S. at 658 n.7 ("[A]bsent actual coercion by the officer, there is no constitutional imperative requiring the exclusion of . . . evidence . . . .").

Thus, for Tekoh to establish a violation of his Fifth Amendment rights at his criminal trial, he must show that he was actually "compelled" to become a "witness against himself." U.S. Const. amend. V. Tekoh was twice given the chance to make that showing, and twice failed: Two different juries in his Section 1983 action found that Deputy Vega did not actually

compel Tekoh's self-incriminating statement. Pet. App. 6a-8a. So as a matter of adjudicated fact—unchallenged here—Tekoh's self-incriminating statement was *not* compelled. And "police cannot violate the [Self-Incrimination] Clause by taking unwarned though voluntary statements." *Patane*, 542 U.S. at 632.

Tekoh's argument that his statement should have been excluded from his criminal trial under *Miranda* is beside the point. That is a claim that the judges at that trial failed to apply *Miranda*'s presumption of coercion. But that is different from arguing that the statement introduced at trial was actually coerced. The Ninth Circuit itself recognized this: As the court observed, the admission of an unwarned statement may violate *Miranda* even where the police questioning at issue "did not rise to the level of coercion—a significantly higher standard" for inadmissibility than the *Miranda* standard. Pet. App. 25a. So Tekoh's allegation that he was in custody for *Miranda* purposes when Vega questioned him does not establish, on its own, that a coerced or compelled statement was introduced against him at his criminal trial. And that defeats Tekoh's Fifth Amendment claim, since it is only the "admission into evidence . . . of confessions obtained through *coercive* custodial questioning" that violates "the right protected by the text of the Self-Incrimination Clause." *Chavez*, 538 U.S. at 772 (emphasis added).

2. *Dickerson* Does Not Equate A *Miranda* Violation With A Fifth Amendment Violation

Below, the Ninth Circuit accepted that Tekoh's statement was not coerced, yet nevertheless

concluded that “the use of an un-*Mirandized* statement against a defendant in a criminal proceeding violates the Fifth Amendment and may support a § 1983 claim.” Pet. App. 20a, 25a. It did so based on its view that *Dickerson* overrode this Court’s decisions describing *Miranda* as “prophylactic” and instead “made clear” that the *Miranda* evidentiary rule is a “right secured by the Constitution,” such that a violation of *Miranda* is equivalent to a violation of the Fifth Amendment right against self-incrimination. *Id.* at 13a, 20a. But the Ninth Circuit misunderstood *Dickerson*. Indeed, *Dickerson*’s reasoning is fully consistent with this Court’s treatment of *Miranda* as a prophylactic rule sweeping more broadly than the Fifth Amendment.

a. In *Dickerson*, this Court had to decide whether Congress could pass a statute overriding *Miranda* and providing that the *only* standard for admissibility of a self-incriminating statement at a criminal trial is the traditional “voluntariness” standard imposed by the Fifth Amendment itself. *See* 18 U.S.C. § 3501(a)-(b); *Dickerson*, 530 U.S. at 437 (“[W]e must address whether Congress has constitutional authority to . . . supersede *Miranda*.”). In an opinion by Chief Justice Rehnquist, the Court reasoned that Congress could not override the *Miranda* evidentiary rule by statute because “*Miranda* is constitutionally based” and rests on “constitutional underpinnings.” 530 U.S. at 440 & n.5. Thus, as *Dickerson* held, *Miranda* stated “a constitutional rule that Congress may not supersede legislatively.” *Id.* at 444.

Yet *Dickerson* nowhere characterized *Miranda* the way the Ninth Circuit described it—as establishing a Fifth Amendment constitutional “right” to exclude unwarned statements from evidence at trial, or as

having enlarged the Fifth Amendment right to suppress the use of compelled statements at trial. Pet. App. 13a. Nor did *Dickerson* state or imply that a *Miranda* violation can give rise to a Section 1983 claim. To the contrary, *Dickerson* explained that its holding was entirely consistent with the slew of precedents described above, which carefully distinguished between the prophylactic rule prescribed by *Miranda* and the right against self-incrimination protected by the Fifth Amendment. *See* 530 U.S. at 437-38, 441 (discussing *Harris*, *Quarles*, and *Elstad*); *see also Patane*, 542 U.S. at 644-45 (Kennedy, J., concurring in the judgment) ("*Dickerson* . . . did not undermine [*Harris*, *Quarles*, and *Elstad*] and, in fact, cited them in support.").

The Court could have disavowed those decisions if it had meant to: Indeed, the *Dickerson* dissenters took the *Dickerson* majority to task for asserting "the power . . . [to] impos[e] what it regards as useful 'prophylactic' restrictions upon Congress and the States," even without an actual Fifth Amendment violation. 530 U.S. at 446 (Scalia, J., dissenting). In the face of that accusation of "judicial overreaching," however, the *Dickerson* majority did not deny that it was indeed upholding a prophylactic rule against congressional interference. *Id.* at 442. Instead, the Court explained that it was simply reaffirming *Miranda*'s conclusion that "something more than the totality [of the circumstances] test was necessary" to protect against the "risk of overlooking an involuntary custodial confession" when evaluating whether to admit a confession "offered in the case in chief to prove guilt." *Id.* That description of *Miranda* is fully consistent with the "prophylactic"

understanding of *Miranda* that the Court had long embraced.

As to the constitutional nature of the *Miranda* rule, *Dickerson* broke no new ground. As early as 1973, this Court had described *Miranda* as having established a "prophylactic *constitutional* rule." *Payne*, 412 U.S. at 53 (emphasis added). And this Court's post-*Dickerson* decisions have continued to describe *Miranda* as setting forth a "prophylactic" rule. *See, e.g.*, *J.D.B.*, 564 U.S. at 269; *Montejo*, 556 U.S. at 794. Indeed, the plurality opinions in *Chavez* and *Patane*—which were joined by Chief Justice Rehnquist, *Dickerson*'s author—clearly reaffirmed that the "*Miranda* exclusionary rule [is] a prophylactic measure," *Chavez*, 538 U.S. at 772, that "sweeps more broadly than the Fifth Amendment itself," *id.* at 770 (citation omitted). As the *Patane* plurality explained, "a mere failure to give *Miranda* warnings does not, by itself, violate a suspect's constitutional rights or even the *Miranda* rule. So much was evident in many of our pre-*Dickerson* cases, and we have adhered to this view since *Dickerson*." *Patane*, 542 U.S. at 641.

b. The Ninth Circuit was therefore wrong to conclude that *Dickerson* altered "the status quo" and "affirmatively backed away from previous decisions . . . that had described *Miranda* warnings as merely prophylactic." Pet. App. 20a. *Dickerson* did no such thing. And the Ninth's Circuit's implied premise—that there is some kind of fundamental incompatibility between *Miranda*'s status as a constitutional decision and the prophylactic nature of the *Miranda* rule—is just mistaken. *Miranda* is *both* constitutional *and* prophylactic. As the United States explained in its successful merits brief in *Patane*,

"[t]he dichotomy that the court of appeals drew between *Miranda* as a 'constitutional' rule and *Miranda* as a 'prophylactic' rule in fact does not exist." *Patane* U.S. Br. 40 (July 14, 2003), 2003 WL 21715020.

To take an analogous example, this Court has elsewhere fashioned "a judicially created remedy . . . to safeguard Fourth Amendment rights": the exclusionary rule by which "evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *United States v. Calandra*, 414 U.S. 338, 347-48 (1974). That rule, like the *Miranda* rule, is grounded in the Constitution and thereby binds state courts. *See Mapp v. Ohio*, 367 U.S. 643, 657-58 (1961); *see also Tucker*, 414 U.S. at 446-47 (citing *Calandra* and comparing *Miranda*'s exclusionary rule to Fourth Amendment exclusionary rule).

But *Calandra* properly described the Fourth Amendment exclusionary rule as a "judicially created remedy . . . rather than a personal constitutional right of the party aggrieved," notwithstanding its purpose of "safeguard[ing] Fourth Amendment rights." 414 U.S. at 348. Likewise, *Miranda* establishes a "prophylactic protection of the right against compelled self-incrimination," *Montejo*, 556 U.S. at 794, which "sweeps more broadly than the Fifth Amendment itself," *Elstad*, 470 U.S. at 306. As this Court has explained, it is an "inherent attribute of prophylactic constitutional rules, such as those established in *Miranda*," that applying them will benefit "some defendants who have suffered no constitutional deprivation." *Payne*, 412 U.S. at 53. Because Section 1983 relief is limited to plaintiffs who

suffer the violation of a "right[], privilege[], or immunit[y] secured by the Constitution and laws," 42 U.S.C. § 1983, it does not create a cause of action for the violation of a mere constitutional prophylactic rule. *See, e.g.*, *Blessing v. Freestone*, 520 U.S. 329, 340 (1997) ("In order to seek redress through § 1983 . . . a plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law*."). For that reason, a violation of the Fourth Amendment exclusionary rule (as distinct from an underlying violation of the Fourth Amendment itself) does not violate a constitutional right or give rise to a Section 1983 claim for damages. *Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir.) (Jacobs, J.) (citing *Calandra*), *cert. denied*, 528 U.S. 964 (1999).

Similarly, the Supremacy Clause undoubtedly sets forth a constitutional rule—but does not give rise to a right to relief under Section 1983. *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 107 (1989). As this Court explained, "'[t]hat clause is not a source of any federal rights,'" but rather "'"secure[s]" federal rights by according them priority whenever they come in conflict with state law.'" *Id.* (second alteration in original) (citation omitted). Likewise, *Miranda* is not the source of federal rights either—it merely secures such rights by prophylactically excluding evidence that might otherwise violate the Fifth Amendment.

In recognizing a right to relief under Section 1983 for *Miranda* violations, the Ninth Circuit erroneously failed to distinguish *Miranda*'s prophylactic rule from the Fifth Amendment right that rule is intended to safeguard. Nothing in *Dickerson* justifies that result.

3. Extending *Miranda* To Create Section 1983 Liability Is Not Necessary To Protect The Fifth Amendment Right Against Self-Incrimination

The practical effect of the Ninth Circuit's decision is to weaponize *Miranda*'s prophylactic presumption of coercion—which has always been limited to the narrow context of the prosecution's case-in-chief at a criminal trial—in personal damages actions under Section 1983 against police officers. This extension of *Miranda* is not only contrary to longstanding precedent, but also unnecessary to protect the Fifth Amendment right against compelled self-incrimination. Indeed, if adopted, this extension would impair this Court's *Miranda* jurisprudence.

a. The creation and expansion of constitutional prophylactic rules is the exception, not the norm, and generally a practice this Court has sworn off. *See Montejo*, 556 U.S. at 795-97. The Court has explained that judicially crafted rules like *Miranda* are "justified only by reference to [their] prophylactic purpose," *Shatzer*, 559 U.S. at 106 (quoting *Davis v. United States*, 512 U.S. 452, 458 (1994)), and admonished that "any . . . extension of these rules must be justified by its necessity for the protection of the actual right against compelled self-incrimination." *Patane*, 542 U.S. at 639 (citing *Chavez*, 538 U.S. at 778 (Souter, J., concurring in the judgment)).

Therefore, when deciding whether *Miranda*'s presumption of coercion should apply in a given situation, this Court has taken a pragmatic approach, and engaged in a "balancing [of] interests," *Tucker*, 417 U.S. at 450, so as to "maintain the closest possible

fit between the Self-Incrimination Clause and [the] judge-made rule designed to protect it," *Patane*, 542 U.S. at 643. In case after case, this Court has concluded that the "close-fit requirement" for applying *Miranda*'s presumption of coercion is satisfied in only one context: "the prosecution's case in chief" at a criminal trial. *Id.* at 639-40. That limited evidentiary rule is "sufficient" to serve the prophylactic purpose for which *Miranda* was crafted. *Id.* at 643 (quoting *Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in relevant part and dissenting in part)). And in cases like *Elstad*, *Quarles*, *Harris*, and *Tucker*, this Court has repeatedly declined to expand *Miranda* to new contexts in which core Fifth Amendment rights and liberty interests are not so directly at stake. *See supra* at 22-25.[2]

b. Authorizing Section 1983 claims against police officers based on *Miranda* violations would upset the

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[2] The Court has also applied *Miranda* as a ground for relief in habeas proceedings. *See Withrow v. Williams*, 507 U.S. 680, 683 (1993). *Withrow* itself specifically distinguished between *Miranda*'s "prophylactic" rule and the Fifth Amendment's "trial right" against the introduction of involuntary statements, *id.* at 690-91 (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990)). The "most important[]" reason the Court allowed habeas review of *Miranda* claims was its policy judgment that "eliminating [habeas] review of *Miranda* claims would not significantly benefit the federal courts," because it "would not prevent a state prisoner from simply converting his barred *Miranda* claim into a . . . claim that his conviction rested on an involuntary confession," a claim requiring inquiry into "the totality of circumstances." *Id.* at 693. The Court therefore reasoned that "abdicating *Miranda*'s bright-line" presumption in the habeas context "would not likely reduce the amount of [habeas] litigation," and might compound it. *Id.* at 694.

careful balance of interests that this Court has consistently struck in the half-century since *Miranda* was handed down.

The practical effect of the decision below is to import *Miranda*'s prophylactic standard for gauging the admissibility of custodial confessions in criminal trials into the context of civil damages claims, where such standard may be used to determine whether a statement used at the plaintiff's criminal trial was unlawfully "coerced" or "compelled." Tekoh's brief opposing certiorari reflects this understanding, as it tendentiously refers to the use of his "compelled" statements at trial, notwithstanding a jury verdict concluding that his statements were voluntary. Opp. 1; *see also id.* at 14. Yet Tekoh offers no explanation why *Miranda*'s prophylactic presumption of coercion—which does not even apply consistently at a criminal trial, *see supra* at 22-24—should apply in subsequent civil proceedings for money damages.

Extending *Miranda*'s presumption of coercion to the Section 1983 context is unnecessary to protect the Fifth Amendment, and it does not come close to meeting this Court's "close-fit" test. The only possible justification for Section 1983 liability in this context would be to deter law-enforcement officers from taking unwarned statements. But as the *Patane* plurality recognized, "there is, with respect to mere failures to warn, nothing to deter," because "police do not violate a suspect's constitutional rights (or the *Miranda* rule) by negligent or even deliberate failures to provide [a] suspect with the full panoply of warnings prescribed by *Miranda*." *Patane*, 542 U.S. at 641-42; *see also Patane* U.S. Br. 32 (likewise disclaiming need for deterrence). Thus, an extension of *Miranda* to a novel context "cannot be justified by

reference to a deterrence effect on law enforcement." 542 U.S. at 643.

Even assuming that such a deterrence effect *is* a proper justification for extending the scope of the *Miranda* rule, it does not justify extending *Miranda*'s presumption of coercion into the Section 1983 context. As Justice Kennedy recognized in *Chavez*, the operation of the *Miranda* presumption in its traditional context—the prosecution's case-in-chief at a criminal trial—is a "sufficient" incentive for police to provide *Miranda* warnings, *Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in relevant part), because it discourages officers from running the "risk that valuable evidence w[ill] be lost" through a failure to administer the warnings, *Tucker*, 417 U.S. at 443.

The extension of the *Miranda* presumption into claims for damages would significantly ratchet up that deterrence effect, and in ways that cannot be justified under this Court's existing *Miranda* precedents. As the Court has recognized, unwarned statements have valuable and lawful uses in policing and at trial—where the taking of an unwarned statement would avert a "danger to the public safety," for instance, *see Quarles*, 467 U.S. at 657, or for the impeachment of a defendant's testimony, in order to deter the defendant from "commit[ting] perjury," *Harris*, 401 U.S. at 225; *see also supra* at 22-24. Here, for example, Vega was responding—in real time—to what he reasonably viewed as a credible claim of a serious sexual assault by an employee at a public hospital.

Yet a rule holding officers liable in money damages for *Miranda* violations will deter such lawful uses of unwarned statements, since an officer cannot be sure how an unwarned statement might be used at trial (or

even whether there will be a trial) at the time he takes the unwarned statement. And the question whether *Miranda*'s evidentiary rule even applies will often be obscure, particularly for police officers reacting rapidly to unfolding events. "Police officers are ill-equipped to pinch-hit for counsel, construing the murky and difficult questions of when 'custody' begins or whether a given unwarned statement will ultimately be held admissible." *Elstad*, 470 U.S. at 316. An officer who knows he may face liability in damages for failure to warn will often be deterred from taking an unwarned statement even in situations when this Court has made clear that he should face no such deterrent.

In this way, the broad deterrent effect of imposing Section 1983 liability for *Miranda* violations—and importing *Miranda*'s prophylactic standard for measuring coercion into a novel civil context—would directly undermine this Court's nuanced, "close-fit" approach to the application of *Miranda*, and wrongly turn *Miranda* into a code of police conduct. *Patane*, 542 U.S. at 637, 640. This Court should reject that approach and adhere to its precedents, which indicate that *Miranda*'s prophylactic purpose finds "complete and sufficient" effect in the operation of the *Miranda* exclusionary rule at criminal trials. *Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in relevant part).

C. Law-Enforcement Officers Do Not Proximately Cause The Improper Admission Of Unwarned Statements

The Ninth Circuit's decision should also be reversed because of its mistaken causation holding. That decision applied a broad rule that an officer who lawfully takes an unwarned statement proximately

causes the subsequent unlawful introduction of that statement (by the prosecutor) and admission of the statement (by the trial judge) in the government's case-in-chief against the criminal defendant. Pet. App. 20a-23a. The Ninth Circuit asserted that this chain of events is "reasonably foreseeable," and thus that police officers may be held liable for such *Miranda* violations absent evidence that the officer affirmatively attempted to "prevent" the prosecutor from using the statement or *withheld* the statement from the prosecutor. *Id.* at 21a-22a (citations omitted). That analysis is deeply flawed, and ultimately treats an officer's failure to provide a *Miranda* warning as inherently wrongful—contrary to this Court's precedent.

1. Section 1983 Claims Require Proof That The Defendant Proximately Caused A Constitutional Violation

Section 1983 authorizes remedial action only against a person who "*subjects*, or *causes to be subjected*," a person to deprivation of a constitutional right. 42 U.S.C. § 1983 (emphasis added). The statute "creates a species of tort liability," and the "common law of torts" informs the elements necessary for recovery. *County of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1548 (2017) (citations omitted). Proximate causation is therefore a core element of a Section 1983 claim. *See id.*; *Brower v. County of Inyo*, 489 U.S. 593, 599 (1989).

Proximate causation requires a "direct relation between the injury asserted and the injurious conduct alleged." *Mendez*, 137 S. Ct. at 1549 (quoting *Paroline v. United States,* 572 U.S. 434, 444 (2014)). "Injuries have countless causes, and not all should give rise to

legal liability." *CSX Transp., Inc. v. McBride,* 564 U.S. 685, 692 (2011). "[T]he proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc.,* 572 U.S. 118, 133 (2014). It reflects the idea that "[b]ecause of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point." *CSX*, 564 U.S. at 692 (quotation marks and citation omitted).

The proximate cause doctrine limits liability "to those harms that result from the risks that made the actor's conduct tortious" in the first place. Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29 (2010); *see also* Restatement (Second) of Torts § 435 (1965). Proximate cause is thus defined by the "foreseeability or the scope of the risk" created by the defendant's wrongful conduct, *Paroline*, 572 U.S. at 445, considering the "'natural and probable' risks that a reasonable person would likely take into account in guiding her practical conduct," *Mississippi Dep't of Transp. v. Signal Int'l, LLC (In re Signal Int'l, LLC)*, 579 F.3d 478, 491-92 (5th Cir. 2009) (citation omitted). The inquiry ultimately turns on "policy considerations and considerations of the 'legal responsibility' of actors." *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004) (citation omitted).

Applying these principles in Section 1983 cases thus requires consideration of the nature of the underlying constitutional right alleged to be violated, as well as the principle that "each Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Ashcroft v. Iqbal*, 556

U.S. 662, 677 (2009). In a Section 1983 case in which the defendant did not engage in misconduct—or where direct responsibility for any alleged deprivation of rights falls on other government actors who broke the law—the claim against the defendant fails for lack of proximate cause.

2. Reasonable Officers Should Presume That Prosecutors And Judges Will Not Violate *Miranda*

All parties to this case—as well as the Ninth Circuit below—agree that *Miranda* is not violated unless and until a criminal defendant's unwarned statement is introduced against him at his criminal trial as part of the prosecution's case-in-chief. *See supra* at 19. But the decision whether to introduce such evidence does not rest with the police officer who took the statement, since the officer does not control the prosecution's trial strategy. Rather, the crucial decisions lie with (1) the *prosecutor*, who must decide that the statement is admissible under *Miranda* and worth including as part of the case against the defendant; and (2) the *trial judge*, who must adjudicate any challenge to the statement's admissibility under *Miranda* and other rules of evidence. A *Miranda* violation occurs only if both of those actors make mistakes of law.

It follows from this that when a *Miranda* violation does occur, it is proximately caused by the flawed decisions of the prosecutor and judge, not by the officers who took the unwarned statement. *See Elstad*, 470 U.S. at 316-17; *see also Chavez* U.S. Amicus Br. 16 n.7 (Sept. 5, 2002), 2002 WL 31100916 ("[T]he relevant state actor in most Self-Incrimination Clause contexts would be the prosecutor who

attempted to introduce the statement, who would be entitled to absolute immunity from such a claim.").

Here, for example, Vega did not make the decision to introduce or admit Tekoh's confession as evidence at his criminal trial. Rather, his responsibility was to investigate a credible report of a serious sexual assault with a possible perpetrator at large in a public hospital. The decision to introduce the evidence was made by the state prosecutor, who later acknowledged that she exercised her own "independent prosecutorial judgment" in concluding that *Miranda* would not be violated by presenting Tekoh's incriminating statement at his criminal trial. JA-154-55. And both state trial judges presiding over that trial likewise exercised *their* own independent judgment on the question, and rejected Tekoh's arguments that the statements should be suppressed under *Miranda*. *See supra* at 7-8.[3]

It makes little sense—and is deeply unfair—to treat an officer's decision to take an unwarned statement as the proximate cause of the prosecutor's later unlawful introduction (and trial court's erroneous admission) of that statement at the eventual trial. Police officers have to make judgments

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[3] Here, Vega's lack of responsibility for any *Miranda* violation is reinforced by the two jury verdicts conclusively rejecting the allegations of (1) fabricating evidence by coercing Tekoh's statement in violation of the Fourteenth Amendment Due Process Clause, and (2) compelling Tekoh's self-incrimination in violation of the Fifth Amendment. *See supra* at 8-9. As this case stands, Vega's only conduct that might arguably be responsible for the alleged *Miranda* violation is his questioning of Tekoh without first providing a *Miranda* warning. As explained, that conduct did not violate *Miranda* or any other legal duty owed to Tekoh. *Supra* at 18-19; *infra* at 43.

on the fly; they are entitled to presume that when they lawfully elicit an unwarned statement from a criminal defendant, the prosecutor and trial judge will not then introduce the statement (or allow it to be introduced) as part of the prosecution's case-in-chief if doing so would violate *Miranda*.

Indeed, this Court has recognized a "'presumption of regularity'" that applies to "prosecutorial decisions." *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citation omitted). Under that presumption, "courts presume that [prosecutors] have properly discharged their official duties." *Id.* (quoting *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926)); *see also Angov v. Lynch*, 788 F.3d 893, 905 (9th Cir. 2015) ("The presumption of regularity has been applied far and wide to many functions performed by government officials.") (collecting cases), *cert. denied*, 577 U.S. 1102 (2016).

Reasonable police officers should be able to make the same presumption. For that reason, any subsequent *Miranda* violation by the prosecutor and trial judge is not reasonably foreseeable for purposes of assessing proximate cause. After all, prosecutors and judges are legal experts and far better positioned to apply *Miranda*'s evidentiary rule to the facts at hand. Police officers should be entitled to presume that those actors will fulfill their professional obligations and exercise independent legal judgment to consider whether evidence gathered by officers can be used at trial.

More specifically, reasonable officers should be able to presume that if an unwarned statement is subject to *Miranda*, it will not be admitted into the prosecution's case-in-chief. In those circumstances, officers can presume that the prosecutor will either

use the statement for proper purposes (such as impeaching trial testimony or discovering other relevant evidence, *see supra* at 22-24), or not use the statement at all. For these reasons, any misuse of an unwarned statement in violation of *Miranda* is not the "natural" or "reasonably foreseeable" consequence of the officer's conduct. The officer is accordingly not the proximate cause of any Fifth Amendment violation.

3. The Ninth Circuit's Approach To Proximate Causation Is Deeply Flawed

The Ninth Circuit's causation analysis overlooks the presumption of regularity, transforms *Miranda* into a direct regulation of police conduct, and creates an unworkable standard for officers.

a. Below, the Ninth Circuit held that "a police officer who elicits incriminating statements from a criminal suspect can reasonably foresee that the statements will be used against the suspect in a criminal case." Pet. App. 22a (applying *Stoot v. City of Everett*, 582 F.3d 910 (9th Cir. 2009), *cert. denied*, 559 U.S. 1057 (2010)). But that unreasonably discounts the role—and duty—of the prosecutor and trial judge to make their own determinations about the admissibility of evidence. And, more fundamentally, the foreseeability question does not turn on whether the officer should expect the statement to be used in the criminal case in any fashion whatsoever. Rather, it turns on whether the officer should expect that the statement will be *improperly* used *in a way that violates Miranda*'s exclusionary rule.

The Ninth Circuit's approach requires officers to assume that prosecutors will misuse unwarned

statements and violate *Miranda*. As that court held in *Stoot*—the precedent it relied upon here—officers are liable whenever (1) "use of the confessions *could* ripen into a Fifth Amendment violation" based on the prosecutor's introduction of the confession at trial, and (2) the officer has "no reason to believe that the statements would not be used against [the defendant]." 582 F.3d at 927. The Ninth Circuit therefore reverses the presumption of regularity by requiring officers to presume that prosecutors will *violate* the law—and that judges will let it happen. There is no sound basis for this approach.

b. The Ninth Circuit's treatment of proximate causation also conflicts with this Court's precedent making clear that *Miranda* does not directly impose legal obligations on officers, but instead governs the admissibility of evidence at trial.

The standard tests for proximate causation require a link between (1) conduct by the defendant that is "*unlawful*," *Lexmark Int'l, Inc.,* 572 U.S. at 133 (emphasis added), or "*tortious*," Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29 (emphasis added), and (2) the harm suffered by the plaintiff. The Ninth Circuit's approach addresses the first of these requirements by treating an officer's mere failure to provide a *Miranda* warning as inherently "wrongful[]." *Stoot*, 582 F.3d at 926-27.

That violates this Court's precedents. After all, "[t]he *Miranda* rule is not a code of police conduct" and does not "operate[] as a direct constraint on police." *Patane*, 542 U.S. at 637, 642 n.3. If those statements mean anything, it is that *Miranda* does not itself render improper—or "wrongful"—an officer's questioning of a suspect without a *Miranda* warning. As Justice Marshall put it, *Miranda* leaves

officers "free to interrogate suspects without advising them of their constitutional rights." *Quarles*, 467 U.S. at 686 (Marshall, J., dissenting). Because an officer's conduct in these circumstances is not "unlawful," "tortious," or "wrongful," it cannot be the proximate cause of any ensuing constitutional deprivation at trial.

c. The Ninth Circuit's approach to proximate causation is also unworkable in practice. To see why, consider the following hypothetical. Police officers arrive on the scene of a domestic dispute and encounter a husband and wife engaged in a violent physical struggle. The officers separate the couple into different rooms in their home and ask them about the fight. Neither spouse is given a *Miranda* warning, and in response to an officer's open-ended question about what happened, the husband makes a self-incriminating statement like "She had it coming."

What is the officer supposed to do with that unwarned statement? On the one hand, the officer might believe in good faith that because she interviewed the husband in his home, it was not "custodial" and thus did not trigger *Miranda* at all. But she might not be sure of that, as she is not a lawyer and the law defining "custodial" interrogations is notoriously "murky and difficult." *Elstad*, 470 U.S. at 315-16.[4] Surely the right answer is for the officer to pass along the statement to the prosecutor, who can

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[4] *See, e.g.*, *Howes*, 565 U.S. at 511; *Shatzer*, 559 U.S. at 112; *Yarborough v. Alvarado*, 541 U.S. 652, 666-67 (2004); 2 Wayne R. LaFave et al., *Criminal Procedure* § 6.6(a) (4th ed. 2021 update, Westlaw) (detailing how the "exact meaning" of custodial interrogation "has been a source of difficulty for the courts over the years").

then analyze the legal issues and decide whether and how it might lawfully be used in any subsequent prosecution.

Not in the Ninth Circuit: There, informing the prosecutor of the statement is a risky proposition. After all, if the prosecutor and trial judge agree that the interview was non-custodial under *Miranda*—and if the statement is later introduced in the prosecution's case-in-chief at trial—that determination can be second-guessed in a later Section 1983 action if the jury returns a not-guilty verdict (or if a guilty verdict is later overturned on appeal or vacated on habeas review). And if it turns out the prosecutor and trial judge got the *Miranda* analysis wrong, the *officer*—and only the officer—may be held personally liable for money damages under Section 1983.

Ninth Circuit doctrine offers two alternative answers to the hypothetical—but neither is practical or sound. First, the court says that an officer can protect herself from liability by "never turn[ing] the statements over to the prosecutor in the first place." Pet. App. 21a-22a (quoting *Stoot*, 582 F.3d at 926). That cannot be right. The law cannot possibly encourage officers to *hide* relevant evidence from prosecutors based on the officer's legal estimation of the admissibility of the evidence and the officer's supposition that a prosecutor and judge might get the law wrong. That is especially true in the circumstances hypothesized above—and present in this case—where the prosecutors may have fully legitimate uses for those statements, either because (1) the statements are not actually subject to *Miranda*, or (2) they can be used in lawful ways consistent with *Miranda*.

Second, the Ninth Circuit says that officers can avoid liability by "attempt[ing] to prevent the use of the allegedly incriminating statements" at trial, presumably by advising the prosecutor against such use. *Id.* (quoting *Stoot*, 582 F.3d at 926). That approach is equally wrongheaded. The role of police officers is to investigate crimes and protect the public, not to provide legal guidance to prosecutors on trial strategy. It is completely unrealistic to expect police officers to superintend the legal determinations of prosecutors respecting the admissibility of a statement under *Miranda*.

Indeed, the problem flagged in the hypothetical will occur when the officer herself is unsure of what the right legal answer is. As this Court has rightly noted, "[p]olice officers are ill-equipped to pinch-hit for counsel, construing the murky and difficult questions of when 'custody' begins or whether a given unwarned statement will ultimately be held admissible." *Elstad*, 470 U.S. at 316. Those are precisely the circumstances in which officers can and should defer to the government's in-house legal experts—the prosecutors. The Ninth Circuit's approach takes that sensible option off the table.

The bottom line here is simple: Police officers who lawfully investigate crimes should not be held responsible for legal misjudgments by prosecutors and judges acting independently, without meaningful officer input or control, months or years after the fact. Reasonable officers should be entitled to assume that those other government actors will follow the law and faithfully apply *Miranda*. This Court should reject the Ninth Circuit's blame-the-officer approach to proximate causation.

II. THE DECISION BELOW IMPOSES UNDUE BURDENS ON LAW ENFORCEMENT

As explained, Tekoh's Section 1983 claim must fail because it rests on the violation of a prophylactic rule, not a constitutional right, and because law-enforcement officers like Vega are not proximately responsible for violating that rule. That result is not only proper under this Court's precedents, but also necessary to maintain the integrity and coherence of this Court's *Miranda* jurisprudence. The Ninth Circuit's decision undermines the *Miranda* framework by deterring law-enforcement officers from reporting a suspect's unwarned statements to prosecutors—even when the officer's conduct was lawful and there are perfectly lawful uses for those unwarned statements. *See supra* at 33-36.

Yet even that point understates the radical sweep of the Ninth Circuit's decision, which subjects law-enforcement officers to the threat of liability in any instance when a criminal defendant simply offers an alternative set of disputed facts regarding the circumstances of an interrogation conducted in alleged violation of *Miranda*. The Ninth Circuit's rule subjects officers to intolerable litigation risks in connection with routine police work. It must be rejected.

1. The Ninth Circuit's decision in this case allows Tekoh's *Miranda*-based Section 1983 claim to proceed to trial even though a state prosecutor and *two* different state criminal trial court judges independently determined that Tekoh was not in custody at the time he made his self-incriminating statement. JA-131-34. As those state courts correctly recognized, there was no *Miranda* problem here, and

therefore no need for exclusion of Tekoh's statement. In addition, as *two* different federal civil juries in this case determined, Vega's questioning of Tekoh at Tekoh's workplace was not coercive. Pet. App. 6a-8a. By those lights, Tekoh never suffered any violation of the Fifth Amendment, or even the *Miranda* rule: Tekoh's statement was voluntarily made, and it was not made in a custodial setting that would have triggered the need for *Miranda* warnings.

Despite those jury and state-court determinations, the Ninth Circuit held that Tekoh may force a jury trial on the question "whether Tekoh was in custody" at the time that Vega questioned him, a question that the Ninth Circuit treated as a "disputed question of fact that turn[s] on 'credibility determinations that an appellate court is in no position to make.'" Pet. App. 24a (quoting *Caballero v. City of Concord*, 956 F.2d 204, 207 (9th Cir. 1992)).

Thus, the Ninth Circuit's decision requires a civil jury to weigh credibility determinations governing an admissibility question that two different state trial courts *already* made, and even after both of those courts determined that Tekoh was not in custody for purposes of *Miranda*. JA-156-57. Under the Ninth Circuit's rule, so long as a plaintiff alleges and testifies in a civil proceeding that the circumstances of a law-enforcement officer's questioning materially differed from the circumstances described by the officer and found by a criminal trial court, the plaintiff may force a jury trial for resolution of that credibility dispute.

2. If Vega may face Section 1983 liability in this instance, there are no limits to the circumstances in which a triable Section 1983 claim might arise from a *Miranda* dispute. The permissive liability standard

adopted by the Ninth Circuit is bound to carry pernicious downstream consequences.

Among other things, to stave off expensive and time-consuming civil litigation, police departments around the country will be forced to advise their officers to read *Miranda* warnings even when a suspect (like Tekoh) is likely *not* in custody. Such prophylaxis on top of prophylaxis vitiates the core logic of *Miranda*—which is designed to protect against the risk of coercion that attends police questioning where a criminal suspect is "incommunicado," placed in "isolation and unfamiliar surroundings." 384 U.S. at 445, 450. And this will come at the cost of unnecessarily interfering with the legitimate—and entirely constitutional—efforts of the police to protect public safety.

Furthermore, nothing in the Ninth Circuit's decision would prevent civil plaintiffs from asserting that they did *not* receive *Miranda* warnings even when they *did* receive them. If it is only the plaintiff's word against the officer's, the Ninth Circuit's rule appears to treat that as a factual dispute subject to a civil jury's credibility determination. The Ninth Circuit's decision therefore offers no reason to believe that the doctrine of qualified immunity would protect officers against scurrilous *Miranda*-based Section 1983 claims. *See, e.g.*, *Plumhoff v. Rickard*, 572 U.S. 765, 768 (2014) (noting that, on review of a motion for summary judgment on qualified-immunity grounds, a court must "view the facts in the light most favorable to the nonmoving party").

Thus, the rule articulated by the Ninth Circuit subjects law-enforcement officers to the pervasive risk of *Miranda*-related civil litigation even when those officers punctiliously follow *Miranda*'s

procedural safeguards. Such litigation imposes real costs on police departments and public safety. Most obvious are the direct costs of litigation and potential liability. As petitioner's *amici* demonstrated at the certiorari stage, the damages claims in Section 1983 cases like this one frequently run into the millions, and drain local-government resources through costly, prolonged litigation. *See* International Municipal Lawyers Association Amici Cert. Br. 14-15 (listing illustrative damages claims); National Association of Police Organizations ("NAPO") Amicus Cert. Br. 10-11 (quantifying litigation and settlement costs).

Less visible, but even more troubling, are the costs to the efficient investigation of crime and the preservation of public safety. As the National Association of Police Organizations has explained, 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 Cert. Br. 4. These hindrances "increase to an intolerable degree interference with the public interest in having the guilty brought to book." *United States v. Blue*, 384 U.S. 251, 255 (1966).

* * *

All of this just confirms that extending Section 1983 liability to alleged violations of *Miranda* would entail extraordinary "costs and risks," *Chavez*, 538 U.S. at 778-79 (Souter, J., concurring in the judgment), that would subvert the purposes that the *Miranda* rule is designed to serve. *Miranda* provides a valuable prophylactic shield for the preservation of criminal defendants' trial right against self-incrimination. But transforming it into a sword for damages in Section 1983 actions would undermine

the balance of interests this Court's *Miranda* precedents have long sought to protect. The Court should reject the Ninth Circuit's rule and hold that officers cannot be held liable in these circumstances.

CONCLUSION

The Ninth Circuit's judgment should be reversed.

Respectfully submitted,

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ADDENDUM

TABLE OF CONTENTS

Page

U.S. Const. amend. V 1a

42 U.S.C. § 1983 .... 2a

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C. § 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.