

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 OF FALSE CONFESSION AND
WRONGFUL CONVICTION SCHOLARS
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*

This Brief of *Amici Curiae* is respectfully submitted in support of Respondent and pursuant to Supreme Court Rule 37(2).¹

Amici are scholars with expertise in false confessions and wrongful convictions.² They have studied the causes of false confessions. They have also studied the dynamics that lead to wrongful convictions. They have found these phenomena are connected. *Amici* have examined these issues from distinct academic disciplines, including law, psychology, criminal justice, and sociology.

Richard A. Leo is the Hamill Family Professor of Law and Psychology at the University of San Francisco School of Law and a Fellow in the Institute for Legal Research at the University of California, Berkeley School of Law. Professor Leo is one of the leading experts in the world on police interrogation practices, the impact of *Miranda*, psychological coercion, false confessions, and the wrongful conviction of the innocent. Professor Leo has authored more than 100 articles in leading scientific and legal journals as well as several books. Professor Leo has been the recipient of Soros

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, or their counsel, made a monetary contribution to its preparation or submission. Counsel for both parties have filed a blanket consent for the filing of amicus briefs in this case.

¹ Affiliations provided for informational purposes only.

and Guggenheim fellowships as well as a Fellowship from the Center for the Advanced Study in the Behavioral Sciences at Stanford University. In 2011, he was elected to the American Law Institute.

Valena Elizabeth Beety is a Professor of Law at the Arizona State University Sandra Day O'Connor College of Law and the deputy director of the Academy for Justice, a criminal justice center connecting research with policy reform. Previously, Professor Beety served as a law professor and the founding director of the West Virginia Innocence Project at the West Virginia University College of Law. Her experiences as a federal prosecutor in Washington, D.C., and as an innocence litigator in Mississippi and West Virginia, shape her research and writing on wrongful convictions, forensic evidence, the opioid crisis, and incarceration. She is the co-editor of *WRONGFUL CONVICTIONS READER* (2018) and *SCIENTIFIC EVIDENCE* (2020). Professor Beety has successfully exonerated wrongfully convicted clients and obtained presidential grants of clemency for drug offenses. She has served as an elected board member of the Innocence Network, an invited board member of the Research Center on Violence, and an appointed commissioner on the West Virginia Governor's Indigent Defense Commission.

Justin Brooks is the Director and Co-Founder of the California Innocence Project and a Professor of Law at California Western School of Law. Over the course of his career, Professor Brooks has served as counsel on many high profile criminal cases and

has exonerated more than 35 innocent people. Professor Brooks has founded innocence organizations throughout Latin America and speaks around the world about innocence work. He has authored numerous publications, including *WRONGFUL CONVICTIONS: CASES AND MATERIALS* (2018).

Daniel Medwed is the University Distinguished Professor of Law and Criminal Justice at Northeastern University School of Law. He is a leading authority on criminal law, with a focus on research and pro bono activities around the topic of wrongful convictions. He has published numerous books in this field, including *PROSECUTION COMPLEX: AMERICA'S RACE TO CONVICT AND ITS IMPACT ON THE INNOCENT* (2012). Professor Medwed is a founding member of the Board of Directors of the Innocence Network. He currently serves on the Board of Directors of the New England Innocence Project and is a former president of the Board of Directors of the Rocky Mountain Innocence Center.

Dan Simon is the Richard L. and Maria B. Crutcher Professor of Law and Psychology at the University of Southern California Gould School of Law. He teaches criminal law as well as various courses at the intersection of law and psychology. He also teaches courses on law and psychology and on wrongful convictions at the USC Dornsife College of Letters, Arts and Sciences. Professor Simon has published extensively and is the author of *IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS* (2012). He has served on the Human Factors Committee of the National

Institute for Standards and Technology (NIST) project on developing standards and guidelines for reforming the forensic sciences (2014 – 2020).

Sandra Guerra Thompson is the Newell H. Blakely Professor of Law and former Director of the Criminal Justice Institute at the University of Houston Law Center. She is widely published in the areas of criminal law, evidence, the regulation of forensic evidence, and federal asset forfeiture. Her scholarship includes *COPS IN LAB COATS: CURBING WRONGFUL CONVICTIONS THROUGH INDEPENDENT FORENSIC LABORATORIES* (2015). Professor Thompson served as the founding member of the Board of Directors of the Houston Forensic Science Center, and she served as Vice Chair from 2015-2019. Professor Thompson is an elected member of the American Law Institute and an elected Council Member for the International Association of Evidence Science.

Amici believe their submission will assist the Court in its deliberations.

SUMMARY OF ARGUMENT

This case highlights the importance of providing civil remedies to individuals when a law enforcement officer fails to provide the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966).

False confessions by innocent people are real. Wrongful convictions of innocent people are also real. Yet the criminal justice system has failed to develop sufficient mechanisms to connect these phenomena or adopt meaningful rules to prevent

their occurrence. Each of these phenomena undermine the integrity of the criminal justice system. Collectively, they reflect a catastrophic failure.

There is an inexorable connection between false confessions and wrongful convictions. *See generally* Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS 9 (G. Daniel Lassiter & Christian A. Meissner eds., 2010). Studies reveal that false confessions are often the result of three sequential errors: (1) misclassification (when police erroneously misclassify an innocent suspect as guilty); (2) coercion (when police elicit a false confession from an innocent suspect); and (3) contamination (when police leak or disclose non-public crime details to an innocent suspect and script their confession). In turn, false confessions represent a unique and powerful form of evidence that can lead to wrongful convictions. The pathway from false confessions to wrongful convictions is guided by two phenomena: (1) false confessions are self-reinforcing; and (2) they are counter-intuitive to the presumption that innocent people do not confess to a crime they did not commit.

There is now ample research on false confessions and wrongful convictions. This research is robust and has been scientifically validated. *See, e.g.*, GISLI H. GUDJONSSON, THE PSYCHOLOGY OF FALSE CONFESSIONS: FORTY YEARS OF SCIENCE AND PRACTICE (2018); Saul M. Kassin et al., *On the*

General Acceptance of Confessions Research: Opinions of the Scientific Community, 73 AM. PSYCH. 63 (2018) (hereinafter “Kassin I”). It is also multidisciplinary, having been generated in multiple fields, including law, psychology, criminal justice, and sociology.

In *Miranda*, 384 U.S. at 467 and its progeny, the Supreme Court acknowledged that custodial interrogations are coercive and that a formal warning is needed to protect individuals from the “inherent compulsions of the interrogation process.” Studies have revealed the profound consequences of custodial interrogation, which can lead to false confessions and even wrongful convictions. While an important safeguard, the exclusionary rule that applies following a *Miranda* violation is only a partial remedy when a law enforcement officer fails to follow the law. Something more is required.

The civil remedies authorized by Congress in 42 U.S.C. § 1983 supplement the constitutional protections afforded by the *Miranda* warning. In contrast to the relief offered by *Miranda*, civil remedies provide a twofold benefit. First, they offer individuals redress for the significant harms they suffer when a law enforcement officer fails to provide the appropriate *Miranda* warning. Second, they deter future violations by establishing meaningful sanctions for the failure to protect this most basic of civil rights.

ARGUMENT

In his classic 1923 treatise, John Henry Wigmore wrote that false confessions were “scarcely conceivable,” “of the rarest occurrence,” and that “no trustworthy figures of authenticated instances exist.”³ JOHN HENRY WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW §§ 835, 867 (2d ed. 1923). Almost 100 years later, it is now established that false confessions are certainly possible, occur with troubling frequency, and are corroborated by numerous academic studies and law enforcement statistics. *See generally* Viviana Alvarez-Toro & Cesar A. Lopez-Morales, *Revisiting the False Confession Problem*, 44 J. AM. ACAD. PSYCH. & L. 34 (2018); Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051 (2010) (hereinafter “Garrett I”); Edwin D. Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42 (1968). It is also established that false confessions can lead to wrongful convictions. Indeed, the evidence is now overwhelming.⁴

³ Despite Wigmore’s assertions, scholars of his era had already identified the problems associated with false confessions and wrongful convictions. *See, e.g.*, EDWIN BORCHARD, CONVICTING THE INNOCENT: SIXTY-FIVE ACTUAL ERRORS OF CRIMINAL JUSTICE (1932) (providing dozens of examples of mistaken convictions); HUGO MÜNSTERBERG, ON THE WITNESS STAND: ESSAYS IN PSYCHOLOGY AND CRIME 135 (1908) (addressing “untrue confessions”).

⁴ Scholars have published numerous case studies documenting false confessions and wrongful convictions. *See*

I. FALSE CONFESSIONS OCCUR FOR SEVERAL REASONS

Social science research reveals that false confessions are often the result of three sequential errors: (1) misclassification (when police erroneously misclassify an innocent suspect as guilty); (2) coercion (when police elicit a false confession from an innocent suspect); and (3) contamination (when police leak or disclose non-public crime details to an innocent suspect and script their confession). Leo & Drizin, *supra*, at 12–13. These are sequential errors, which means each error compounds and affects subsequent interactions with the suspect-*cum*-defendant.

A. MISCLASSIFICATION

The process leading to false confessions begins when police first misclassify an innocent person as a guilty suspect. When this happens, police investigations are then guided by the “presumption of guilt.” This can occur for several reasons.

There is a myth in law enforcement that police officers can readily detect guilt or innocence through observational evidence. In fact, many forms of nonverbal behavior and demeanor are associated with guilt. However, social science research has established that police cannot

generally JAMES R. ACKER & ALLISON D. REDLICH, *WRONGFUL CONVICTION: LAW, SCIENCE, AND POLICY* (2d ed. 2019); JUSTIN BROOKS, *WRONGFUL CONVICTIONS: CASES AND MATERIALS* (3d rev. ed. 2018); *TRUE STORIES OF FALSE CONFESSIONS* (Rob Warden & Steven A. Drizin eds., 2009).

distinguish truth tellers from liars at levels significantly greater than chance. *See* Aldert Vrij et al., *Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection*, 11 PSYCH. SCI. PUB. INT. 89, 101–02 (2010); Paul Ekman & Maureen O’Sullivan, *Who Can Catch a Liar?*, 46 AM. PSYCH. 913 (1991). This also applies to other professionals, including prosecutors and judges.

Another myth in law enforcement is that police officers can generate a detailed profile of a suspect by simply reviewing crime evidence, including crime reports. The problem here is twofold. First, crime reports often use terminology that implicates guilt, such as referring to suspects as “troubled,” “prone to violence,” and “hostile and agitated.” Leo & Drizin, *supra*, at 16. Second, police then rely on these reports to focus on the misclassified suspect while excluding potential suspects.

A third myth is that law enforcement professionals are immune to cognitive errors because of their professional training. Yet studies reveal that law enforcement officials are subject to the same cognitive errors that affect all human beings. *See generally* RICHARD A. LEO, POLICE INTERROGATION AND AMERICAN JUSTICE (2008) (hereinafter “LEO I”); Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, WISC. L. REV. 291 (2006). Two such errors—tunnel vision and confirmation bias—are present in nearly every case of false confessions. Leo & Drizin, *supra*, at 23; Findley & Scott, *supra*, at 307–08.

Tunnel vision is a psychological tendency that causes an individual to focus on one possibility or outcome to the exclusion of all others. Leo & Drizin, *supra*, at 23. *See also* CARROLL TAVRIS & ELLIOT ARONSON, *MISTAKES WERE MADE (BUT NOT BY ME): WHY WE JUSTIFY FOOLISH BELIEFS, BAD DECISIONS AND HURTFUL ACTS* (3d ed. 2020). In the context of criminal justice, tunnel vision occurs when an individual—police, prosecutors, judges, and jurors—“focus on a suspect, select and filter the evidence that will ‘build a case’ for conviction, while ignoring or suppressing evidence that points away from guilt.” Dianne L. Martin, *Lessons About Justice From the “Laboratory” of Wrongful Convictions: Tunnel Vision, the Construction of Guilt, and Informer Evidence*, 70 U.M.K.C. L. REV. 847, 848 (2002).

Confirmation bias is a psychological tendency that causes an individual to seek out and interpret evidence in ways that support existing beliefs, perceptions, and expectations, and to avoid or reject evidence that does not. Leo & Drizin, *supra*, at 23. *See also* THOMAS GILOVICH, *HOW WE KNOW WHAT ISN’T SO: THE FALLIBILITY OF HUMAN REASON IN EVERYDAY LIFE* (1991). In the context of criminal justice, confirmation bias routinely affects the manner in which police, prosecutors, judges, and jurors assess the evidence.

Collectively, these individual actions can generate a misclassification error, identifying innocent people as guilty and leading to additional errors.

B. COERCION

Once misclassification has occurred, police will then engage in a guilt-presumptive, accusatory interrogation. Leo & Drizin, *supra*, at 17. During these interrogations, law enforcement techniques are designed to confirm the misclassification error.

During interrogation, suspects are typically placed in a custodial environment that is designed to isolate and disempower them.⁵ This isolation and corresponding fear bolster the psychological manipulation that occurs—heightening the fear of harsh treatment and the corresponding desire for leniency. The length of the interrogation can further isolate and disempower suspects.

Several forms of psychological manipulation occur during police interrogations. Suspects are routinely subjected to false and misleading statements by law enforcement. They are manipulated with promises of leniency if they confess as well as with threats of harsh treatment if they refuse.⁶ Deborah Davis & William T.

⁵ For example, police interrogation manuals recommend placing suspects in small, windowless rooms with no opportunities for communication. FRED E. INBAU ET AL., *CRIMINAL INTERROGATION AND CONFESSIONS* 47 (5th ed. 2013).

⁶ There is extensive scientific literature assessing how police interrogators use minimization (offering leniency) and maximization (threatening severe consequences) strategies to convince a suspect into providing a false confession. See Saul M. Kassin & Karlyn McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 L. & HUM. BEHAV. 233 (1991).

O'Donohue, *The Road to Perdition: "Extreme Influence" Tactics in the Interrogation Room*, in HANDBOOK OF FORENSIC PSYCHOLOGY: RESOURCES FOR MENTAL HEALTH AND LEGAL PROFESSIONALS 897 (William T. O'Donohue & Eric R. Levensky eds., 2004); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997). In these situations, suspects are made to believe they have no option but to accept responsibility for an act they did not commit.⁷ See generally GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (2003). Some police even convey to suspects that they have an obligation to confess. Kyron Huigens, *Custodial Compulsion*, 98 B.U. L. REV. 523 (2019).

By creating an environment of fear, hopelessness, and helplessness, police can coerce a suspect into confessing.⁸ In this environment, a suspect believes "the only way to improve the otherwise hopeless situation is by admitting to

⁷ Cf. Eza Bella Zakirova, *Is it Rational or Not?: When Innocents Plead Guilty in Child Sex Abuse Cases*, 82 ALB. L. REV. 815 (2019) (describing how innocent people may plead guilty in abuse cases).

⁸ The risk of coercion is particularly high for adolescents and individuals with physical or mental disabilities. See generally Samson J. Schatz, *Interrogated with Intellectual Disabilities: The Risks of False Confessions*, 70 STAN. L. REV. (2018); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 L. & PSYCH. REV. 53, 58 (2007).

some version of the offense.” Leo & Drizin, *supra*, at 19; Davis & O’Donohue, *supra*, at 917. Indeed, the pressure placed on suspects is so great that some come to believe they are, in fact, guilty despite their actual innocence. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 15 (2010) (hereinafter “Kassin III”). Indeed, “[t]he logic of modern interrogation is that it makes the irrational (admitting to a crime that will likely lead to punishment) appear rational” Leo & Drizin, *supra*, at 19. The goal of these interrogations is not always accuracy; it is often affirmation.

C. CONTAMINATION

Misclassification and coercion can lead to false confessions. These false confessions are then bolstered by law enforcement efforts to provide the suspect with inside information as well as a post-admission narrative that confirms the confession. This post-admission narrative is critical to affirming the false confession. Leo & Drizin, *supra*, at 19–20; Garrett I, *supra*, at 1066–74.

Contamination involves “the transfer of inside information—nonpublic details about the crime that only the true perpetrator could have known—from one person to another person during a police investigation.” Laura H. Nirider et al., *Combating Contamination in Confession Cases*, 79 U. CHI. L. REV. 837, 847 (2012). This non-public information bolsters the confession’s credibility—how else would a suspect know this information unless they were guilty? Richard A. Leo et al., *Promoting*

Accuracy in the Use of Confession Evidence: An Argument for Pretrial Reliability Assessments to Prevent Wrongful Convictions, 85 *TEMPLE L. REV.* 759, 775–76 (2013) (hereinafter “Leo II”) (describing how false confessions often contain information that “only the true perpetrator could know”); Saul M. Kassin, *Why Confessions Trump Innocence*, 67 *AM. PSYCH.* 431, 440 (2012) (hereinafter “Kassin II”) (explaining how false confessions are structured to offer “proof” of the confessor’s guilty knowledge”).

Contamination also occurs when police officers work to generate a narrative that confirms the suspect’s false confession. Leo II, *supra*, at 776; Leo & Drizin, *supra*, at 20. Police will begin to script the suspect’s confession. They suggest “how and why” the crime occurred. They provide possible motives and plausible explanations. They correct misstatements and provide missing information. They even provide the suspect with factual and legal conclusions about their alleged actions. See Sara C. Appleby et al., *Police-Induced Confessions: An Empirical Analysis of Their Content and Impact*, 19 *PSYCH. CRIME & L.* 1 (2011).

Significantly, contamination need not be intentional. Police may reveal non-public information to a suspect unintentionally, a result of the accusatory, guilt-presumptive interrogation process. Leo II, *supra*, at 769–70. See also Christian A. Meissner & Saul M. Kassin, “*He’s Guilty!*”: *Investigator Bias in Judgments of Truth and Deception*, 26 *L. & HUM. BEHAV.* 469 (2002). Of course, contamination may also be intentional

when police “become so certain of the suspect’s guilt that they refuse to even-handedly evaluate new evidence or to consider the possibility that a suspect may be innocent” Leo II, *supra*, at 440. Regardless of intent, contamination has a profound impact.

In sum, social science research reveals that false confessions can occur because of misclassification, coercion, and contamination. Sequentially, these phenomena will generate three essential features—accuracy, voluntariness, and consistency—that are necessary for the criminal case to move from accusation to conviction. LEO I, *supra*, at 171–77.

II. FALSE CONFESSIONS ARE A UNIQUE AND POWERFUL FORM OF EVIDENCE THAT CAN LEAD TO WRONGFUL CONVICTIONS

Wrongful convictions represent a catastrophic failure of the criminal justice system. Yet it is widely recognized that wrongful convictions occur with some regularity. Indeed, thousands of wrongful convictions have been identified. *See generally* THE PSYCHOLOGY AND SOCIOLOGY OF WRONGFUL CONVICTIONS: FORENSIC SCIENCE REFORM (Wendy J. Koen & C. Michael Bowers eds., 2018); THE WRONGFUL CONVICTIONS READER (Russell D. Covey & Valena E. Beety eds., 2018); Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMIN. 429 (1998).

Wrongful convictions occur for many reasons: eyewitness misidentification; use of informants; forensic errors; inadequate defense; and official misconduct. *See generally* BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG (2011); SCOTT CHRISTIANSON, INNOCENT: INSIDE WRONGFUL CONVICTION CASES (2004). These phenomena are well-documented. In addition, false confessions can also contribute to wrongful convictions.⁹

Confessions—whether truthful or false—have a profound impact on the criminal process. This point has been recognized repeatedly. In *Bruton v. United States*, 391 U.S. 123, 139 (1968) (White, J., dissenting), for example, Justice White wrote that a confession is “probably the most probative and damaging evidence that can be admitted.” In *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (Brennan, J., dissenting), Justice Brennan indicated that “no other class of evidence is so profoundly prejudicial.” Scholars who have studied the phenomenon of false confessions have come to the same conclusion. *See, e.g.*, Leo II, *supra*, at 771 (“Confessions have long been considered among the most dispositive types of evidence in criminal cases”); Kassin III, *supra*, at 4 (“[Confessions are] the gold standard in evidence”).

⁹ Studies indicate that false confessions have contributed to hundreds of wrongful convictions. *See, e.g.*, Leo & Drizin, *supra*, at 12 (“[T]he percentage of miscarriages of justice involving false confessions range from 14% to 60%.”).

The pathway from false confessions to wrongful convictions is guided by two phenomena: (1) false confessions are self-reinforcing; and (2) they are counter-intuitive to the presumption that innocent people do not confess to a crime they did not commit.

First, false confessions are self-reinforcing. These statements acknowledge responsibility for the underlying criminal act. They typically include non-public information that corroborates the admission of responsibility. They also convey a logical and cohesive narrative. Because they are self-reinforcing, false confessions have a disproportionate impact on the criminal process. *See generally* Leo & Drizin, *supra*, at 22; Kassir II, *supra*, at 440; Michael D. Pepson & John N. Sharifi, *Lego v. Twomey: The Improbable Relationship Between an Obscure Supreme Court Decision and Wrongful Convictions*, 47 AM. CRIM. L. REV. 1185, 1214 (2010); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 916 (2004). Prosecutors, judges, and jurors will interpret all subsequent evidence accordingly when “they hear that someone has written or signed a confession statement that contains a plausible narrative of how and why the crime occurred as well as detailed knowledge of the crime facts.” Leo & Drizin, *supra*, at 25. In fact, “[o]nce a suspect has confessed, the formal presumption of innocence is quickly transformed into an informal presumption of guilt that biases the subsequent decisions of fact finders

and overrides their analysis of exculpatory evidence.” *Id.*; Leo & Ofshe, *supra*, at 434, 492.

Second, false confessions are counter-intuitive to the presumption that innocent people do not confess to crimes they did not commit.¹⁰ Linda A. Henkel et al., *A Survey of People’s Attitudes and Beliefs About False Confessions*, 26 BEHAV. SCI. & L. 555, 556 (2008). From police to prosecutors and from judges to jurors, a person’s confession to a crime they did not commit is seen as “irrational (if not nonsensical), self-destructive, and contrary both to common sense and to the way that self-interested humans are presumed to act.” Leo II, *supra*, at 774; Kassin III, *supra*, at 24.

For these reasons, a false confession generates a cascade effect that can lead to a wrongful conviction. *See generally* Leo II, *supra*, at 772; Leo & Drizin, *supra*, at 22. First, police will rely on the false confession to disregard exculpatory evidence and neglect potential leads.¹¹ They will even close their investigation of the underlying crime.¹² Leo

¹⁰ Individuals routinely assert it would be “incredible” for someone to confess to a crime they did not commit. WELSH S. WHITE, *MIRANDA’S WANING PROTECTIONS: POLICE INTERROGATION PRACTICES AFTER DICKERSON* 139 (2001).

¹¹ *See* Garrett I, *supra*, at 1087 (“The vast majority of [wrongfully convicted defendants] . . . made statements in their interrogations that were contradicted by crime scene evidence, victim accounts, or other evidence known to police during their investigation.”).

¹² *See* Garrett I, *supra*, at 1086–87 (“[P]olice often ceased their investigation once they obtained a confession . . .”).

II, *supra*, at 772; Leo & Ofshe, *supra*, at 440–41. Second, defense counsel may change their litigation strategy and even pressure their clients to accept an adverse plea agreement because of the false confession.¹³ Ofshe & Leo, *supra*, at 984; Leo & Drizin, *supra*, at 25. Third, prosecutors will rely on the false confession in their legal submissions and arguments to the judge and jury.¹⁴ Leo & Drizin, *supra*, at 22; Ofshe & Leo, *supra*, at 984. Fourth, the trial judge will consider the false confession while assessing various legal issues.¹⁵ Daniel

¹³ See Sara C. Appleby & Hadley R. McCartin, *Effective Assistance of Counsel? An Empirical Study of Defense Attorneys’ Decision-Making in False-Confession Cases*, CARDOZO L. REV. DE NOVO 123, 162 (2019); Kassin II, *supra*, at 438–39; Allison D. Redlich, *False Confessions, False Guilty Pleas: Similarities and Differences*, in Lassiter & Meissner, *supra*, at 49.

¹⁴ Studies have revealed that false confessions often lead prosecutors to discount exculpatory DNA evidence. See Sara C. Appleby & Saul M. Kassin, *When Self-Report Trumps Science: Effects of Confessions, DNA, and Prosecutorial Theories on Perceptions of Guilt*, 22 PSYCH. PUB. POL’Y & L. 127, 132–34 (2016). Studies also reveal that prosecutors are less likely to propose or accept plea bargains in these cases. Alafair S. Burke, *Prosecutorial Passion, Cognitive Bias, and Plea Bargaining*, 91 MARQ. L. REV. 183, 184 (2007).

¹⁵ Studies have revealed how judges are subject to the adverse consequences of a false confession. See Leo II, *supra*, at 878 (“[T]rial judges routinely credited the ‘inside knowledge’ present in . . . false confessions—i.e., misleading specialized knowledge—as evidence of their voluntariness.”); Garrett I, *supra*, at 1100–11 (“Though the Supreme Court has ruled out reliance on reliability as an independent reason to exclude a

Givelber, *Punishing Protestations of Innocence: Denying Responsibility and Its Consequences*, 37 AM. CRIM. L. REV. 1363, 1366 (2000). Significantly, research has established that “whether the trial judge allows a confession to be admitted into evidence against the defendant is the key decision point in determining the risk that a false confession will lead to a wrongful conviction.” Leo II, *supra*, at 776. Fifth, the jury will give the false confession great weight in its deliberations. Leo & Drizin, *supra*, at 22; Ofshe & Leo, *supra*, at 984. Finally, appellate courts will often rely on the false confession to affirm a wrongful conviction. See generally Keith A. Findley, *Innocence Protection in the Appellate Process*, 93 MARQ. L. REV. 591 (2009).

In sum, false confessions play a significant role in many cases of wrongful conviction. When false confessions are admitted into the stream of evidence at trial, they are “highly likely to result in the conviction of the innocent person.” Leo II, *supra*, at 777.

confession, judges noted the perceived reliability when admitting these confessions and finding them to be voluntary.”); D. Brian Wallace & Saul M. Kassin, *Harmless Error Analysis: How Do Judges Respond to Confession Errors?*, 36 L. & HUM. BEHAV. 151 (2012); Saul M. Kassin & Katherine Neumann, *On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 L. & HUM. BEHAV. 469, 481–82 (1997).

III. THE CIVIL REMEDIES PROVIDED BY 42 U.S.C. § 1983 SUPPLEMENT THE CONSTITUTIONAL PROTECTIONS AFFORDED BY THE *MIRANDA* WARNING TO PREVENT FALSE CONFESSIONS AND WRONGFUL CONVICTIONS

The *Miranda* warning is a constitutional rule that gives meaning to the protections of the Fifth Amendment. Yale Kamisar, *The Miranda Case Fifty Years Later*, 97 B.U. L. REV. 1293 (2017). It was recognized by the Supreme Court to ensure procedural fairness in the interrogation process. In *Miranda*, 384 U.S. at 467, the Supreme Court acknowledged that custodial interrogations are coercive and that a formal warning is needed to protect individuals from the “inherent compulsions of the interrogation process.”¹⁶ In the absence of the *Miranda* warning, suspects are even more likely to offer a false confession and be subject to wrongful conviction.¹⁷ Kassin I, *supra*, at 72.

¹⁶ See also *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (citation omitted) (“Any police interview of an individual suspected of a crime has ‘coercive aspects to it.’”); *Corley v. United States*, 556 U.S. 303, 321 (2009) (“[T]here is mounting empirical evidence that . . . [custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed.”).

¹⁷ While the *Miranda* warning can help prevent the risk of false confessions and wrongful convictions, research also highlights the shortcomings of the *Miranda* warning. See generally Charles D. Weisselberg, *Mourning Miranda*, 96 CALIF. L. REV. 1519 (2008); Richard A. Leo, *Miranda and the Problem of False Confessions*, in *THE MIRANDA DEBATE: LAW,*

While important, the exclusionary rule that applies following a *Miranda* violation is only a partial remedy. Something more is required when police do not follow the law. For these reasons, the civil remedies afforded by 42 U.S.C. § 1983 are an essential complement to *Miranda*. Section 1983 was broadly written by Congress to provide redress to individuals who have suffered “the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws” and to deter future violations. This applies to *Miranda* violations. See *Kastigar v. United States*, 406 U.S. 441, 470 (1972) (Marshall, J., dissenting) (“For when illegal police conduct has occurred, the exclusion of evidence does not purport to purge the conduct of its unconstitutional character. The constitutional violation remains, and may provide the basis for other relief, such as a civil action for damages [under] 42 U.S.C. § 1983”). In particular, Section 1983 provides a twofold benefit.

First, Section 1983 serves as a powerful deterrent. The exclusionary rule alone cannot prevent false confessions or wrongful convictions.

JUSTICE, AND POLICING 271 (Richard A. Leo & George C. Thomas eds., 1998) (hereinafter “Leo III”). For example, the phenomena that lead to false confessions can also lead to a suspect’s waiver of their *Miranda* rights. Laura Smalarz et al., *Miranda at 50: A Psychological Analysis*, 25 CURR. DIR. PSYCH. SCI. 455, 457 (2016). Once a suspect has waived their *Miranda* rights, they remain subject to the coercive environment of custodial interrogation. Leo II, *supra*, at 276. See also Laurie Magid, *Deceptive Police Interrogation Practices: How Far Is Too Far?*, 99 MICH. L. REV. 1168 (2001).

Section 1983 offers a financial deterrent that supplements any available criminal law remedies. Indeed, the deterrent value of Section 1983 has long been recognized by this Court. *See, e.g., Hudson v. Michigan*, 547 U.S. 586, 597–99 (2006) (acknowledging the deterrent effect of Section 1983 in the criminal field).

Second, Section 1983 provides individuals with a remedy for the harms they have suffered. Individuals who were coerced into giving a false confession suffer immensely. Law enforcement officials placed them in a coercive environment that pressured them to confess and then guided them to generate a post-admission narrative that supported their confession. In cases of wrongful conviction, individuals were classified by the criminal justice system as guilty for a crime they did not commit. Studies have documented the adverse consequences of being wrongfully accused of criminal offenses.¹⁸ *See* Samantha K. Brooks & Neil Greenberg, *Psychological Impact of Being Wrongfully Accused of Criminal Offences: A Systematic Literature Review*, 61 *MED., SCI. & L.* 44 (2021). Studies have also documented the harmful impact of false

¹⁸ These harms are wide-ranging. They result in changes to personality and loss of dignity as well as damage to an individual's reputation and credibility. While these harms can affect any individual, they are particularly significant for individuals accused of abuse while working in positions of trust. *See* Ros Burnett et al., *The Context and Impact of Being Wrongly Accused of Abuse in Occupations of Trust*, 56 *HOWARD J. CRIM. JUST.* 176 (2017).

confessions even to individuals who are never prosecuted or are freed following a wrongful conviction.¹⁹ See Lily Goldberg et al., *Obstacles and Barriers After Exoneration*, 83 ALB. L. REV. 829 (2020); Kyle C. Scherr et al., *Perpetually Stigmatized: False Confessions Prompt Underlying Mechanisms That Motivate Negative Perceptions of Exonerees*, 24 PSYCH. PUB. POL'Y & L. 341 (2018).

To be clear, the consequences of false confessions and wrongful convictions extend far beyond the individual who is wrongfully accused or convicted. Harm extends to the victims of the crime and their families. See Lara Bazelon, *Ending Innocence Denying*, 47 HOFSTRA L. REV. 393, 419–28 (2018) (describing the consequences to the victims of the underlying crime and to their families). And, of course, the broader community is affected when someone is wrongfully accused because this means the real perpetrator is not in custody. Jeanne Bishop & Mark Osler, *Prosecutors and Victims: Why Wrongful Convictions Matter*, 105 J. CRIM. L. & CRIMIN. 1031, 1044 (2015) (describing how wrongful convictions allow the real perpetrator to escape justice and remain free with the potential to harm other victims); James R. Acker, *The Flipside Injustice of Wrongful Convictions: When the Guilty Go Free*, 76 ALB. L. REV. 1629, 1632–33

¹⁹ See also Jeff Kukucka & Andrew J. Evelo, *Stigma Against False Confessors Impacts Post-Exoneration Financial Compensation*, 37 BEHAV. SCI. & L. 372, 373–74 (2019) (finding that false confessors are stigmatized more than other exonerees).

(2013) (describing how actual perpetrators may commit new crimes when someone is wrongfully accused).

Civil litigation under Section 1983 can offer relief that is simply not available through other mechanisms. The suppression of evidence that follows a *Miranda* violation cannot remedy the suffering experienced by someone who was intentionally placed in a coercive environment, subject to extensive manipulation, and guided to generate a false confession. Indeed, the harm caused in such cases extends far beyond the criminal process. Accordingly, the civil remedies afforded by Section 1983 offer redress and meaningful sanctions for the failure to protect the most basic of civil rights.

CONCLUSION

For these reasons, *Amici* respectfully request this Court to affirm the decision of the lower court.

Respectfully submitted, April 6, 2022

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